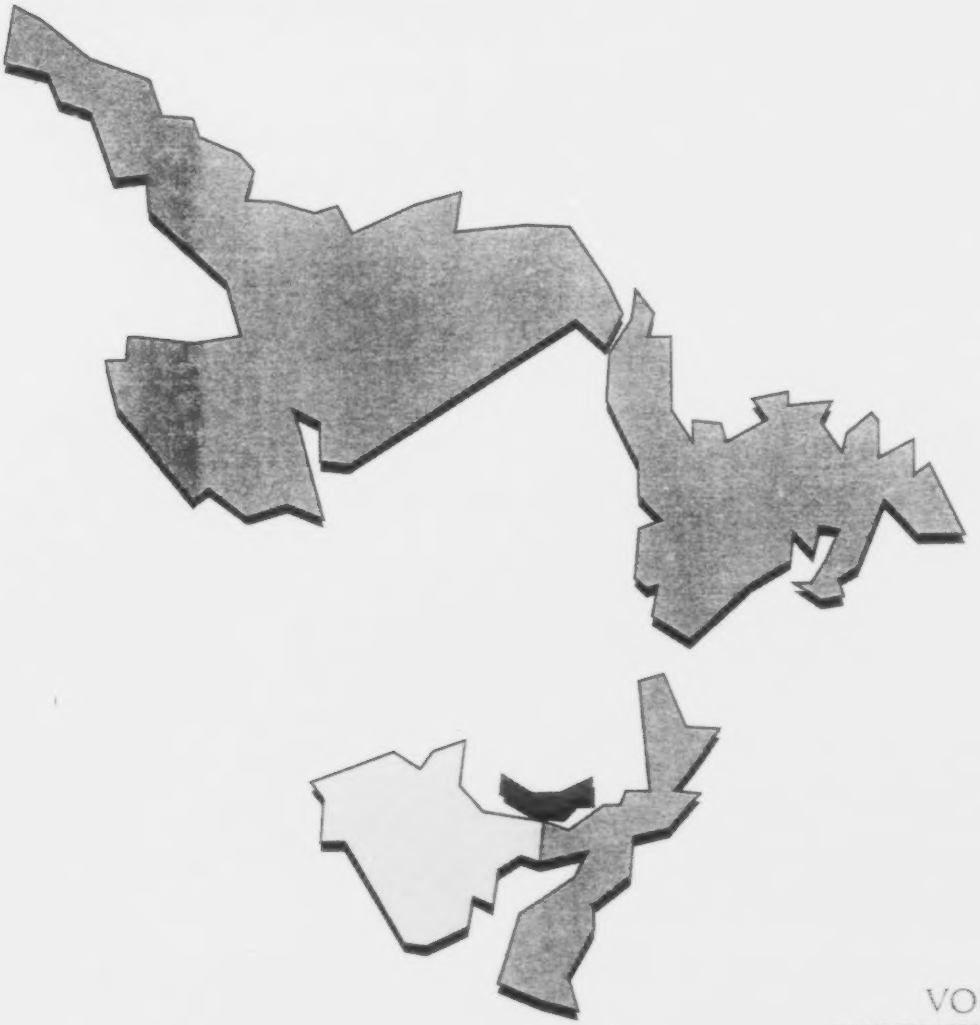
ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE



VOLUME 1:
EXECUTIVE SUMMARY

REPORT TO THE ATLANTIC PREMIERS

SEPTEMBER 30TH, 2003

104-02277/

THE COUNCIL OF
ATLANTIC PREMIERS
LE CONSEIL DES PREMIERS
MINISTRES DE L'ATLANTIQUE

September 23, 2003

Premier Pat Binns
Chair, Council of Atlantic Premiers
5161 George Street, Suite 1006
Halifax, Nova Scotia B3J 1M7

Dear Premier Binns:

It is with pleasure that I submit the report of the Atlantic Canada Insurance Harmonization Task Force in accordance with the terms of reference provided.

I would like to take this opportunity to acknowledge the tremendous cooperation received from all members of the Task Force: Bennett Campbell from Prince Edward Island, Yassin Choukri from New Brunswick, Paul Lafleche from Nova Scotia, and Barbara Wakeham from Newfoundland and Labrador. Their unfailing commitment to the task and the spirit of collegiality that was present throughout is evidenced by the completed report of the Task Force.

In addition, the work of the Task Force was greatly aided by the assistance of the staff at the Council of Atlantic Premiers—in particular, Ed Cramm, assisted by Janice Henderson and Brad Hodgins.

Appreciation is also extended to the consultants who assisted the Task Force. In particular, Shelley Miller, Q.C., of the law firm of Fraser Milner Casgrain LLP, an internationally recognized expert in insurance matters, compiled a very comprehensive summary of options for the delivery of automobile insurance in Atlantic Canada.

Finally, I would also like to acknowledge the many submissions made to the Task Force by a variety of groups, all of whom have a genuine interest in bringing resolution to the insurance issue.

It has been my privilege and an honour to serve as the Chair of the Task Force.

Respectfully submitted,

Fred Morash

Fred Morash
Chair, Atlantic Insurance Harmonization Task Force

c: Premier Roger Grimes
Premier John Hamm
Premier Bernard Lord

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TABLE OF CONTENTS

OVERVIEW 1
  A. TERMS OF REFERENCE 1
  B. COMPLETION OF TASKS 2
  C. SUMMARY OF FINDINGS 5
  D. DISCUSSION OF INVESTIGATION IN TASK 2 7
  E. DISCUSSION OF FINDINGS IN TASK 2 17
SUMMARY 24

OVERVIEW

The Atlantic Canada Insurance Harmonization Task Force ("The Task Force") was established by the Council of Atlantic Premiers at its meeting in Charlottetown, Prince Edward Island on June 18, 2003 . Its terms of reference are set out below as follows:

COUNCIL OF ATLANTIC PREMIERS

ATLANTIC INSURANCE HARMONIZATION TASK FORCE

A. TERMS OF REFERENCE

SCOPE OF STUDY

The Council of Atlantic Premiers Atlantic Insurance Harmonization Task Force will oversee the completion of the following three tasks:

1. Atlantic Canada Harmonization Option

Identify a common, harmonized legislative and regulatory framework for private automobile insurance in Atlantic Canada designed to :

- Create a more efficient market
- Ensure more affordable and fair options for Atlantic Canadian consumers; and
- Promote common underwriting practices to ensure fairness and avoid discrimination for consumers.

Prepare a draft set of harmonized legislation and regulations for automobile insurance for adoption by the four Atlantic provinces.

2. Public Automobile Insurance : Atlantic Canada Option

Conduct and complete a comprehensive study of the full cost-benefit and legal implications of establishing an Atlantic Canada public automobile insurance system.

3. Atlantic Insurance Harmonization Project

Complete the drafting of an Atlantic Canada "Model Act" covering other lines of insurance.

REPORTING STRUCTURE

The Chair of the Task Force will report directly to the Chair of the Council of Atlantic Premiers.

TIME LINE

As soon as possible, the Task Force will submit a work plan with a schedule of activities for approval to the Council of Atlantic Premiers.

A final report on all three tasks will be submitted to the Council of Atlantic Premiers by September 30, 2003 at 4:30 pm AST.

FUNDING

Funding for the Task Force will be allocated through the Secretariat of the Council of Atlantic Premiers. Existing resources will be utilized to the full extent possible.

In the interests of time, the Task Force may contract one or more third parties acceptable to the Council of Atlantic Premiers to: a) undertake the preliminary work on Task 2; and b) prepare some of the legal drafting.

OTHER CONSIDERATIONS

The Task Force will recommend the most appropriate means to incorporate the findings of Tasks 1 and 2 with Task 3.

B. COMPLETION OF TASKS

The report upon each task is presented in three sections of this report identified as Task 1, Task 2 and Task 3. The report upon the work undertaken and completed under Task 1 is found at Tab 1 of Volume 2 of this report, under the heading Atlantic Canada Harmonization Option. The Task Force provided matrices to the four provinces to help tabulate commonalities and divergences in the legislation, and found strong similarities particularly on key issues of affordability, accessibility, transparency and fairness.

It found the regions share common values including beliefs about equal access to insurance services, rate oversight by an impartial board, and access for those who are hard to insure.

The supervision of insurance companies is very similar across the region. Harmonizing reduces cost as well as the paper burden of four different systems. There are strong similarities in the superintendents' perspectives and consultative approach .

The issue is **not** the insurance coverage, but rather the appropriate amount.

There is a strong concordance in the insurance policies used across the four provinces.

Of approximately 40 issues on legislation, approximately 85% are or will be harmonized in a common manner. The Provincial governments must provide further direction on the following issues:

1. A common regulator
2. Individual Superintendents
3. Provision of caps
4. Risk rating factors
5. Accident benefits
6. Underwriting practices

It is recommended that the Atlantic provinces establish a review panel to find solutions to improve harmonization on existing and any future proposals impacting on a common regulatory framework for the Atlantic provinces.

As to Task 2, the Task Force interpreted its undertaking to identify the primary issues in determining how to provide the most reasonable package of basic compulsory automobile insurance that best balances the needs of both the motorists and the traffic injured of Atlantic Canada. Those needs include the features of affordability and availability of basic compulsory insurance and reasonable compensation of the traffic injured. The Task Force determined its work would comprise seven components:

First, it would examine the costs and benefits of converting the automobile insurance compensation system in the Atlantic Provinces from a private enterprise delivery system to a government monopoly system.

Second, it would attempt to assess the potential start up costs of such a conversion and the potential premium savings to be attained therefrom, assuming all other things remain equal.

Third, it would examine the effect of an Atlantic public automobile insurance system on provincial finances.

Fourth, it would examine the International Trade implications of an Atlantic public automobile insurance system.

Fifth, it would consider the legal implications to each province of implementing an Atlantic public automobile insurance system.

Sixth, it would examine the alternative compensation models that might be implemented in any event of the choice of supplier of the mandatory automobile insurance product.

Seventh, it would analyze the extent of harmonization of regulatory practices in the Atlantic Provinces at present, and what possibilities existed for further harmonization on matters touching automobile insurance in the region.

The Task Force obtained independent consultants and commissioned reports on the following issues:

1. An examination of the different forms automobile insurance systems with a special consideration of public auto insurance models with a view to identifying the other relevant implications, costs, benefits and drawbacks of establishing an Atlantic Canada public automobile insurance system.
2. An examination of the International Trade implications of establishing an Atlantic Canada public automobile insurance system.
3. The impact of establishing an Atlantic Canada public automobile insurance system on the respective provincial finances.
4. The legal implications for Atlantic Provinces in establishing an Atlantic Canada public automobile insurance system.

The Task Forced retained Shelley Miller, Q.C. to provide a report of examination of the different forms automobile insurance systems with a special consideration of public auto insurance models and the other relevant implications, costs, benefits and drawbacks of establishing an Atlantic Canada public automobile insurance system.

The Task Force retained the law firm of McCarthy Tetrault to provide a legal opinion on the International Trade implications of establishing an Atlantic Canada public automobile insurance system.

The Task Force retained Mr. William Hogg, retired Deputy Minister of Finance of the province of Nova Scotia to provide a report upon impact of establishing an Atlantic Canada public automobile insurance system on the respective provincial finances.

The Task Force retained John Cameron, Q.C. to provide a summary and consolidation of issues as addressed by the departments of the respective Attorneys General who provided opinions on the legal implications to governments in the Atlantic Provinces of a transformation of their automobile insurance systems to a common public insurance system.

The most important findings of the investigation under Task 2 are set out below for ease of reference followed by a more detailed account of the work. The complete report of the work under Task 2 is found at Volume 2, Tabs 2-6.

As to Task 3, the Atlantic Insurance Harmonization Project, the Task Force attaches as Appendix A, a copy of the transmittal letter from the Superintendents of Insurance of the Atlantic Provinces, which references the completion of the draft Atlantic Canada, model Act. The complete version of the model legislation is contained in Volume 3 of this report.

C. SUMMARY OF FINDINGS

1. **The Task Force found there was no sufficient reason to transform the private enterprise delivery system to a government monopoly supplier.**

2. **The Task Force concluded that not only is the argument not persuasive but rather the weight of the evidence is against the proposition that the implementation of a sole supplier for all or any of the Atlantic provinces would produce effective long term reduction of auto insurance premiums for Atlantic Canada motorists.**

3. **The Task Force conclusions were consistent with comprehensive studies in other jurisdictions from 1968 to 1996 of costs of compulsory automobile insurance which results were found by the Task Force to be as valid and applicable to the unique economic, social and political history of Atlantic Canada today as they were for the time and circumstances of those jurisdictions considered in those studies.**

4. **The Task Force concludes that the low levels of premiums in the public models in Canada with the pure or nearly pure no fault benefits plans are primarily due to the nature of the benefit plans rather than the nature of the supplier.**

5. **The Task Force found the evidence overwhelmingly in support of the conclusion that the primary, long term and core solution to the problem of rising automobile insurance rates does not lie in the issue of who supplies the product but rather, in the characteristics of the product and its design features.**

6. **The observation of the Task Force is that no matter what type of automobile insurance model is considered, the core problem of increases in premiums is and has been consistently identified as the increase in bodily injury loss costs.**

7. **The real issues are two: how the majority of traffic injured can come to terms with reasonable reduction of their compensation so that Atlantic Canadians can afford the cost of basic mandatory automobile insurance and how motorists can come to acceptance of the realistic and reasonable cost of insurance to pay for the injuries caused by insured motorists?**

8. **The principle must be based on recognition of reducing the tort components as far as possible while maintaining the appropriate balance between the cost of premiums and the necessity of reasonable compensation.**

9. **The Task Force recommends that subject to rating variables which the public agree ought to be prohibited, experience risk rating should be utilized in the Atlantic Provinces, as far as possible, to achieve the highest level of fairness to motorists who purchase compulsory basic insurance.**

10. **The Task Force finds that collectively, the Atlantic Provinces could achieve meaningful economies of scale for the motoring public and traffic injured by consolidating their automobile insurance rating processes and personnel into a centralized force.**

11. **The Task Force finds that a common regulator for the region is necessary and desirable.**

12. **The Task Force concludes that a harmonized regulatory review board, with appropriate representation from each Atlantic province, could be created to monitor the issues touching on compulsory automobile insurance rating on behalf of all.**

D. DISCUSSION OF INVESTIGATION IN TASK 2

The Task Force retained its consultants in early August and required the reports be delivered by early September so that it could analyze the findings and report to the Atlantic Premiers on or before September 30, 2003. It recognized that during late summer there could be obstacles in acquiring the detailed data from the public schemes in other Canadian provinces. It nevertheless prevailed upon the members of the Task Force, its consultants, and executives in the public schemes and in sister provincial government departments who provided prompt responses. The Task Force advises that the consultations were detailed and extensive, and it is satisfied that all involved put forth their best efforts. Further the Task Force is pleased with the progress it was able to make in the time frame to date and with the cooperation received from all sources. While the Task Force was greatly assisted during the consultation process, the findings of the Task Force are its own and are unanimous.

This report sets out a brief overview of the components of an automobile insurance delivery system with a reference to the public insurance delivery models in Canada. It then sets out a review of the seven issues under consideration followed by a restatement of findings.

Components of a Public Auto Insurance System

Who supplies the automobile insurance product is a distinct question from what type of product is supplied. There is no conceptual relationship between no fault insurance and Government insurance. The term "public" insurance will be used in this report to denote a government monopoly supplier system, whether it provides a no fault product as in Québec or a maximum tort and enhanced no fault product as in British Columbia.

What decides who will be the supplier?

There have been transformations of the supplier of the automobile insurance product from private enterprise insurers to government monopoly and vice versa. In Australia, there have been instances where private insurers have exited the market place after government mandated insurance rates that were reduced to unacceptably low levels. In Canada, provincial governments have taken over the delivery of the compulsory automobile insurance product on the basis of political policy. The driving behavior of the motoring public, the claiming behavior of the traffic injured, and specific conditions arising within an automobile insurance scheme can also influence these kinds of transformations.

What is the product that is supplied?

Each province and territory has enacted legislation that requires some minimum amount of insurance to be placed on registered and licensed vehicles in case their owners or operators cause injury to another through the vehicle's use or operation. This minimum amount of insurance is referred to variously as compulsory or mandatory insurance, third party liability or basic insurance.

Who supplies the mandatory insurance product in Canada?

Private insurers deliver the mandatory insurance product in Ontario, Alberta, all the Atlantic Provinces, and all the Territories. The mandatory insurance product is delivered in British Columbia, Saskatchewan, Manitoba and Québec by non profit Crown Corporations. Graph 1 depicts the areas in Canada where automobile insurance is delivered by a public supplier and where it is delivered by private enterprise. Graph 2 depicts the numbers of licensed insurers in Ontario, Alberta, the Atlantic Provinces and all the Territories. Graph 3 shows the population, number and location of insured vehicles in the provinces and territories.

The first public plan in Canada was established by the provincial government in Saskatchewan in 1944 to be delivered by a public corporation: the Saskatchewan General Insurance Office. In 1946 automobile insurance was made compulsory and the Saskatchewan Government Insurance Corporation ("SGI") was given monopoly status. In Manitoba, the Manitoba Insurance Corporation, ("MPI") was established as exclusive supplier in the province and commenced operations on November 1, 1971 to administer an automobile insurance plan known as Autopac. The Insurance Corporation of British Columbia, ("ICBC") was given authority in 1973 to engage in all classes of insurance. Private sector insurers are foreclosed from competing with these public plans on the mandatory insurance product. The Province of Québec instituted a monopoly automobile compensation plan in 1978 over the bodily injury portion, while the property damage coverages remained in the hands of private insurers. The plan was delivered by a government board, then known as the Règie de l'assurance automobile du Québec ("Régie") that was virtually autonomous. It is now delivered by the Société de l'assurance automobile du Québec ("SAAQ").

The Task Force sets forth below its review of each of the seven issues in turn.

1. Public Delivery versus Private Delivery Models

From a review of all the studies considering public delivery versus private delivery models, the Task Force lists the advantages and disadvantages reported as follows:

Advantages of a Public Monopoly

1. allows integration of rate setting, risk underwriting, and market operations with machinery for registering vehicles and issuing drivers licenses:
    a. This permits surcharges and discounts that promote deterrence
    b. This lessens after the fact the extent of cross subsidization
    c. This allows owner with high risk occasional driver to pay lower premiums
2. allows concerted emphasis on commitment to road safety
3. allows coordination of indemnities with other social security plans while providing cost of living adjustment and favoring injury rehabilitation

4. produces some savings in business acquisition costs and underwriting costs estimated from a range of 7% to 14%

5. allows greater capacity to smooth premium adjustments

6. allows consistency of claims management

7. allows closer attention to long term care and scheme policy issues removal of data base duplication and provision of consistency in data quality

8. allows control of service provider fees

9. may provide savings in premiums which are capable of being sustained over time.

Disadvantages of Public Monopoly

1. creates rigidities and more limited innovation that would offset reductions in the percentage of premium dollar siphoned away in expenses

2. magnitude of savings would be reduced in any case by introduction of greater tort restriction

3. creates inherent external diseconomies in introducing an exclusive government fund for auto insurance compensation

4. the industry is not a natural monopoly

5. a shift to public monopoly would entail significant financial and organizational implementation requirements

6. it would require retraining and relocation of certain employees in the auto insurance industry including company representatives, brokers, agents, and adjusters who were not employed or engaged by the public corporation and their families because of centralization of some operations. There might also be an impact outside Atlantic Canada on Canada's automobile and general insurance industry

7. in practice, if the change in ownership to a public corporation included a change in market structure with a simplified risk rating model similar to ICBC, MPI, and SGI, the public corporation could not then compete with the private sector, or if it did, it would have to abandon the philosophy of presuming all drivers were good risks until proven otherwise

8. any economies of scale would not be significant

9. the savings in claims adjustment expense would be only very small

10. the commission or business acquisition costs would be lower due to monopoly rather than due to public ownership

11. if cost savings were due to abandoning the classification system and underwriting system, then some percentage of low risk drivers would face premium increases

12. start up costs would be reflected in increased premiums, taxes or both

13. monopoly delivery would foreclose access to benefits of competitive pricing and the incentive to keep premiums low

14. a simplified classification system of the Atlantic public insurance corporation would reduce premiums to high risk drivers which would increase their presence on the road and in turn increase accident frequency and severity which would increase claims costs and eliminate theoretical cost decreases in operating expenses

15. consumers would be denied the benefit of lower premiums resulting from competition

16. it would allow extensive cross subsidization that allows high risk drivers on the road who otherwise could not afford to drive, which is inequitable

17. the loss of corporate tax revenues may need to be balanced through higher taxes in other areas

18. cost savings would be offset by start up costs in the short run and eroded in the long run by other cost based considerations particularly elimination of the potential for lower premiums derived from competition

19. cross subsidization can be designed and sustained

20. can lose optional premiums indefinitely

21. it may cause greater government involvement in premium setting which may have consequences for funding

22. scheme funding and operational risks would be moved to government

23. direct operational impact of loss of revenue and profitability of insurers need to meet government return criteria

24. requires ongoing vigilance, self examination and renewal

25. can undermine strategies for elimination of collateral benefits

26. could limit the ability to manage health treatment and promote optimal recovery until first source is exhausted

27. could make it problematic to obtain data to study costs and outcomes

Advantages of Competition

1. opportunity to benchmark performance
2. price competition
3. acceptance of financial risk
4. advantages of commercial management
5. removal of risk from government
6. competition promotes efficiency, efficacy and evolution especially in claims settlements, administrative methods and adapting rates to changing conditions
7. better service
8. lower premiums
9. innovative insurance products and alternative distribution channels
10. pricing cross subsidies between different coverages do not last long
11. lower costs of labor, shop and pain materials for auto repair costs might be due to competition

The disadvantages of competition may be considered as the converse of the advantages of public monopoly.

The Task Force noted that comprehensive studies were undertaken of this issue by the Royal Commission on Insurance in British Columbia in 1968, by the Committee of Inquiry on Automobile Insurance in Québec in 1974, by the Inquiry into Motor Vehicle Accident Compensation in Ontario in 1988 and by the Review of the Queensland Compulsory Third Party Scheme in 1996. It has noted that the conclusions in all of these studies were the same - that there was no sufficient reason to transform the system to a government monopoly supplier. The Task Force finds that the conclusions in those studies remain as valid and applicable to the unique economic, social and political history of Atlantic Canada today as they were for the time and circumstances of those jurisdictions considered in those studies.

Moreover, the Task Force has noted that in the case of three of the four public automobile insurance models in place in Canada, a pure or nearly pure no fault benefit scheme has been implemented, whereas the remaining public insurance model continues to operate under an unrestricted tort compensation plan. As will be seen in its subsequent findings, the Task Force concludes that the low levels of premiums in the public models in Canada with the pure or nearly pure no fault benefits plans are primarily due to the nature of the benefit plans rather than the nature of the supplier.

2. Cost Savings of Transformation to a Public Scheme

Notwithstanding the evidence presented in the comprehensive studies referred to above, the Task Force did review some current cost projections of conversions to a government monopoly prepared by the Insurance Bureau of Canada ("IBC") for the individual Atlantic Provinces in August, 2003 and sought some objective actuarial analysis of those projections.

Some preliminary information collected about the automobile insurance industry in the Atlantic Provinces is set out in Graph 12. A vehicle registration comparison is depicted in Graph 13. A drivers' license comparison is depicted in Graph 14. An attempted comparison among all provinces of average earned premium is depicted in Graph 15 and of average loss costs is depicted in Graph 16.

The Task Force gave close analysis to the circumstances leading to the creation of Crown corporations in British Columbia, Saskatchewan, Manitoba and Québec, and the actual reported information as to the start up costs, transition issues and costs with a view to determining what specific cost savings could be attainable by converting the existing private enterprise delivery schemes in each of the Atlantic provinces to one or a series of Crown Corporations. In addition to its review of the costings provided by IBC, the Task Force reviewed the careful and extensive considerations of the Ontario, the Alberta and Queensland studies. It noted the difficulties in attempting cost comparisons of this type specifically referenced in the 1996 KPMG study by reason that the information from the public models in Canada is not in the public domain. Ultimately, it found such an exercise would be difficult and inexact at best and possibly unhelpful or misleading at worst. It concluded that under the timeline and information constraints, it could do no more than provide some general projections.

With that qualifier, the Task Force did conclude that the premium saving to be achieved by a conversion to a public scheme similar to the savings in expense and profit margins experienced in the other public schemes would be possible, and in the short term would amount to about 10% of the premium as illustrated between Scenario 1 and 2 and between Scenario 3 and 3b as a preliminary assessment in the Table 1 below.

TABLE 1

Per $100 premium	Current Base	Scenario 1	Scenario 2	Scenario 3	Scenario 3b
Relative Cost	$100	$82	$73	$79	$70
Supplier		Private	Government	Private	Government

As to the issue of start up costs, it was not possible to undertake a thorough evaluation of this question. The Task Force did review some current cost projections prepared by the Insurance Bureau of Canada for the individual Atlantic Provinces in August, 2003 and sought some objective actuarial analysis of those projections. Some information was received from the public models in Canada as to their initial start up costs, but it was not sufficiently detailed or current for our purposes. With the previous qualifications, the Task Force considers a reasonable range for possible start up expenses to span from $54 million to $88 million, with possible additional funds for assets such as land and buildings, and initial contingency capital.

3. Impact on Provincial Finances

Separate from the conclusion about the benefits to be gained from implementing a public automobile insurance supplier, the Task Force conducted an examination of the impact of establishing an Atlantic Canada public automobile insurance system on the respective provincial finances.

The calculation provided did not take into account the potential lost revenues to insurance agencies, brokers, adjusters or appraisers. The approach assumed the entity that might administer an Atlantic public automobile insurance system would be free of all provincial taxes. The Task Force recognizes that there could be other factors not taken into account in this analysis that could ameliorate the effects upon the public finances. As such it suggests the impact on lost revenue of each province would be:

Province	Potential Revenue Loss
Nova Scotia	$ 61,350,000
New Brunswick	$ 70,715,900
Newfoundland and Labrador	$ 60,546,200
Prince Edward Island	$ 5,670,000
TOTAL	$198,282,100

The Task Force notes that the conversion to a government supply system could deprive the Atlantic provinces of premium and corporate tax.

4. Impact of International Trade agreements

Separate from the conclusion about the benefits to be gained from implementing a public automobile insurance supplier, the Task Force conducted an examination of the International Trade implications of establishing an Atlantic Canada public automobile insurance system.

The Task Force noted in its review of experience in British Columbia, Manitoba, Saskatchewan and Québec where governments have moved from private enterprise delivery of compulsory auto insurance to government or sole suppliers that such transformations have occurred evidently without compensation to affected insurers.

It has learned that under the General Agreement on Trade In Services ("GATS") of the World Trade Organization Canada has taken specific market access reservations in respect of those four insurance programs. They likely satisfy the requirements for exemption from the GATS financial services obligations. In the case of an Atlantic public automobile insurance system delivered by Government, and thus a provider of a public motor vehicle insurance, such an entity may be excepted from GATS obligations.

However, under the North American Free Trade Agreement ("NAFTA") investment obligations, Canada would be required to pay compensation to U.S. and Mexican investors if Canada were to directly or indirectly nationalize or expropriate or take measures tantamount to expropriation of their investments. There are no exemptions or reservations for these particular public insurance programs. It may be that the existing public automobile insurance models in Canada have not been challenged under NAFTA because those expropriations were effected prior to the time these obligations applied to Canada under NAFTA. Canada is also subject to investment obligations under the Canada-Chile Free Trade Agreement and other foreign investment protection agreements (referred to collectively as "FIPAs"). However, the FIPAs do not contain any exceptions. Accordingly, Canada is subject to similar compensation obligations under the FIPAs.

5. Legal Implications to Atlantic Provinces

The Atlantic Province can, through appropriate legislation, give themselves the authority to establish a common public automobile corporation, but do not have that authority at present.

The main legislative issue would be the extent to which the Atlantic Provinces public corporation was to have a monopoly, and also whether it could compete with the private sector in non-monopoly areas. The individual provinces have all considered some limitations or common law rights of recovery. It would facilitate the operations of any common provider if these regimes were all the same, but it is not an essential requirement.

It seems most probable that a challenge will focus on the interprovincial nature of the corporation, since that is the most distinctive new feature.

The provinces have ample authority to control insurance. This power extends to creating a government monopoly in the provision of some of all automobile insurance products.

Each province would be required to have legislation that, at a minimum, authorizes the Governor in Council to enter into an agreement with other provinces to establish a public automobile insurance corporation. Additional legislation would be required to establish its monopoly position. The corporation could be incorporated in one or more of the provinces.

6. Alternative Compensation Models

Description of the type of automobile insurance product that is supplied includes questions of who is entitled to claim compensation, how and for how much. There is a spectrum of possibilities ranging from pure tort to pure no fault. The Task Force examined seven alternative compensation models, which are shown in Graph 4. Graph 7 depicts the existing compensation models in Canada. Graphs 8, 9a and 9b show the characteristics of the compulsory third party automobile insurance systems across Australia.

A pure no fault system as in Québec and Manitoba eliminates the proof of fault as a condition of entitlement to compensation. A pure tort system as in Newfoundland and Labrador requires that all traffic injured prove fault of another before they can receive any benefits or compensation.

Alberta, most Atlantic Provinces and the Territories have a maximum tort system with modest mandatory no fault accident benefits. Newfoundland and Labrador is an exception, with optional no fault benefits. Graph 5 is a chart of the current accident benefits in each province in Canada. British Columbia has a maximum tort system as well but has much more generous no fault accident benefits than in Alberta, the Atlantic Provinces and the Territories. Ontario has a hybrid system with enhanced no fault benefits but tort compensation has been restricted in what is called a "threshold system". A variation of the threshold system recently implemented in New South Wales is a tort system with a medical threshold that precludes recovery for general damage awards to claimants with less than 10% permanent partial impairment. Saskatchewan has recently adopted a model which gives consumers the choice between a tort policy and a no fault policy.

It noted that five of those seven models had been critically compared for Alberta in 1991 by Professors Trebilcock and Chapman who established five evaluative criteria, which are listed as follows:

1. deterrence/prevention
2. adequacy of coverage to traffic injured
3. cost internalization
4. operational efficiency
5. premium costs

They found that no one model best achieved all the above listed goals.

Deterrence/Prevention

While debate remains as to whether tort systems have any real capacity to deter bad driving conduct and that criminal sanctions and experience rating are better tools to achieve deterrence, the Osborne and AAIB Reports concluded that the tort system does have some effect on accident prevention and as such, tort models best attain the goal of deterrence and best attributes the costs of traffic accidents to wrongdoers. They also agreed that effective experience risk rating could help attain deterrence.

Extent and Adequacy of Traffic Injured Coverage

The Trebilcock Report concluded that the add on no fault system best provided compensation and expedition of compensation to most traffic injured.

Cost Internalization

The Trebilcock concluded that the tort models best achieved cost internalization by allocating accident costs to wrongdoers and by denying recovery to at fault traffic injured.

Operational efficiency

The Trebilcock Report concluded the pure no fault model best attained the goal of operational efficiency by delivering compensation to traffic injured at a lower administrative cost and in a more timely fashion than other models.

Premium Costs

The Trebilcock Report concluded the pure no fault model best attained the goal of lowest premium costs by eliminating recovery of pecuniary general damages and by the administrative structure.

The Trebilcock Report consolidated the evaluation of the options under the five criteria into a matrix depicted in Graph 7. It can be seen that each model achieves some goals very well but no model achieves all goals better than any other. It is clear from this evaluation that the ultimate policy choices are unavoidably social and political because subjective preferences are attached to the various competing evaluative criteria which reflect competing perspectives on the goals of traffic accident compensation law. The Task Force commends this exercise to help advance the public understanding of the choices and trade-offs that must be confronted.

7. Harmonization of Regulation and Ratemaking

The Task Force noted the following features of regulation and ratemaking were recognized as most beneficial for a privately delivered automobile insurance system.:

- regulatory supervision of automobile insurance premiums but not premium setting
- outside review of the competitive motivation of private insurers
- a rate review body would exert a moderating influence on insurer behavior and it would bring some stability to the market
- rate regulation should control both premium increases and decreases
- extent of regulation should be proportional to the extent to which the competitive market does not achieve its full potential
- objectives of rate regulation should be premium fairness as assessed against sound insurance principles and market stability which will ensure eventual benefit to the public
- appropriate rate regulation should provide a cost efficient mechanism for ensuring that premiums charged by individual insurers are fair and for ensuring market stability
- premium fairness is more important than that of achieving market stability
- premium fairness would not be achieved if the regulatory scheme were unnecessarily costly or works to inhibit competition among insurers
- should not inhibit insurers from being innovative in its rating procedures as this is beneficial to consumers

- regulator should have the power to approve deviated rates where refinements to the classification system may be involved but where rates are otherwise just, reasonable and sound in principle

- if the regulator has the authority over the classification system and the authority to permit insurers to introduce refinements to the system, it will have the advantage of depoliticizing the establishment of appropriate rating criteria

- regulator must have the power to modify the classification system. The insurers should not only have the right but should be encouraged to innovate within reasonable perimeters. Reasonable perimeters would not include socially unacceptable rating criteria

- a public utility model of regulation is not appropriate to a competitive industry even if the product is compulsory since it tends to encourage inefficiency by failing to provide positive incentives for efficiency

- benchmark rates would congregate around the average industry experience which will deny the motoring public of the benefit of lower than average benchmark rates, which would be charged by the more efficient insurers in a truly competitive market

- the benefits of the regulatory regime should be measured against the cost of it and should not develop into a sizeable bureaucracy to administer the scheme and then to have those costs be borne by insurers and then indirectly the motoring public

- the fundamental mandate of a rate review board is to ensure the consumer secures the benefit of reasonable just premium rates.

E. DISCUSSION OF FINDINGS IN TASK 2

Findings on Cost, Benefits and Merits of Government monopoly supply model.

The Task Force has carefully considered all the data presented on the issue of whether a sole government supplier would produce meaningful reduction of premiums or long-term savings as compared to the existing system of private enterprise insurer suppliers.

On this issue, the evidence is overwhelmingly in support of the conclusion that the primary, long term and core solution to the problem of rising automobile insurance rates does not lie in the issue of who supplies the product but rather, in the characteristics of the product and its design features. The Task Force finds it necessary to emphasize the fact that even in provinces where government suppliers have been substituted for private industry, such as British Columbia and Québec, the extensive and comprehensive studies of the scheme problems, undertakings in both cases in excess of two years in length, did not advocate public insurance monopoly suppliers as a solution, in and of itself, to the premium increase problem. Indeed, the Gauvin Report of 1974 recommended a pure no fault compensation model to be delivered by private enterprise insurers. It does not seem that any jurisdiction has the combined features of a pure no fault compensation scheme delivered by private enterprise.

What has provided even more force to this conclusion is the fact that both Manitoba and Saskatchewan converted their private insurance delivery system to a government supplier but maintained a maximum tort minimum no fault compensation plan for some years. Each subsequently converted the benefit plan to a pure or nearly pure compensation model. The contrasting experience in British Columbia is also telling. British Columbia has not restricted its tort compensation model since implementing its government supply feature. In fact, in addition to maintaining tort, it has enhanced its accident benefits. The 1996 KPMG study presented highly persuasive data to support its conclusion that the premium rates will continue to increase in future to unacceptable levels until some meaningful tort restrictions are effected. On the other hand, the province of Québec boldly implemented both a government supplier and a pure no fault model contemporaneously, (although not without a lengthy and extended public, political and social debate, and change of government). For two decades it has on the evidence achieved the elusive goal of premium stability. More will be said later about the extent of compromise given by the traffic injured to achieve that goal.

In addition, the subject of government monopoly was in 1999 fully and fairly considered in the Australian state of Queensland. After a full examination of all the advantages and disadvantages of each, government monopoly was not found choice worthy. The potential savings of conversion to a government monopoly was examined in New South Wales in 1998. A government monopoly was not considered, but instead an innovative tort reform was undertaken. The 1999 New South Wales experiment may prove that motorists and traffic injured themselves are notionally prepared to compromise the compensation principle in tort in exchange for more control over their recovery and rehabilitation destiny, a greater choice of effective rehabilitation strategies, and a reduction of the time and cost expense in attaining the same. While there are no doubt many cultural and social differences between the countries of Canada and Australia that require caution in drawing conclusions from their differing experience, in one respect we found the history in automobile insurance delivery in Canada and Australia to be common. The common feature is that severe economic conditions caused private insurers to leave the market in New South Wales, Queensland and Saskatchewan, where the government took over the delivery of automobile insurance by default.

Based on all the foregoing, the Task Force has concluded that not only is the argument not persuasive but rather the weight of the evidence is against the proposition that the implementation of a sole supplier for all or any of the Atlantic provinces would produce effective long term reduction of auto insurance premiums for Atlantic Canada motorists.

Finding on Cost, Benefits and Merits of the Alternative Compensation Models

The Task Force discovered that the determination of the automobile insurance compensation model that might best suit the consumers of the Atlantic Provinces was a complex undertaking. There clearly is no one perfect system. However, the Task Force found some trends to recur throughout the automobile insurance schemes it has examined no matter where the jurisdiction. It wishes to first set out its views upon these trends.

Primary Cause of Premium Escalation

The Task Force was struck by the nature and extent of debate over the cause of escalating premiums and the similarity of the issues raised in the debate with the many comprehensive studies of auto insurance systems in Canada over three decades. It notes that many its own conclusions mirror the conclusions found by those other studies.

The first observation of this Task Force is that no matter what type of automobile insurance model is considered, the core problem of increases in premiums is and has been consistently identified as the increase in bodily injury loss costs. These costs involve not only the direct payments made to claimants but also include the costs paid to a range of service providers involved in determining the amount of claims payments paid to those claimants. The increases are rising faster than inflation. This trend has been in place for a decade in the west of Canada as well as the east and was predicted earlier to result in large premium increases.

The evidence in support of these conclusions is unassailable. Independent and detailed studies in British Columbia as early as 1968 and as recently as 1996, in Québec, in Manitoba and Alberta clearly and unequivocally state that the bodily injury loss costs escalation are the core problem in automobile insurance compensation models and must be contained if premium rates are to be controlled. It is also clear that litigation with its inherent disputation and duplication of expert investigations has added tremendous pressure to the premium levels in western provinces, and rehabilitation duplication in Ontario has displayed the same pattern.

However for illustrative purposes, Table 1 above also displays the cost saving to be achieved under four scenarios. The first scenario considers a restricted benefit structure with caps of $2500 not indexed for inflation up to a verbal threshold for serious and permanent injury delivered by a private enterprise supply system now in place in the Atlantic Provinces.

The second scenario considers the same model delivered by a government monopoly supply system.

The third scenario considers a benefit structure that has contemplated accident benefits as optional, (by reason that in current Canadian auto insurance schemes, such benefits are not primary and as such may be purchased twice by Canadians with potentially no realistic benefit, absent at fault traffic injury) and has eliminated all recovery for pain and suffering up to the verbal threshold for serious and permanent injury. It is evident that the major savings occur with a system that has a high degree of tort restriction no matter who is the supplier.

While every owner of a vehicle must purchase compulsory insurance every year, very few of those owners sustain injuries in traffic accidents even once in their lifetimes, much less in any one year of driving experience. When they or occupants of their vehicles do sustain injuries and seek money compensation for their losses, there are often so many intermediaries, that sight seems lost of the relationship between who collects the premiums and who pays the premiums.

The residents of Atlantic Canada should make no mistake about this. **It is all insured motorists who pay for the losses of the traffic injured, whether the conduit is one Crown Corporation or a large number of private insurers.** All involved may debate forever whether it is insurers, bad drivers, government departments, health professionals, legal advisors, or highway design consultants who are compounding the problem. That debate clouds the issues.

The real issues are two: how the majority of traffic injured can come to terms with reasonable reduction of their compensation so that Atlantic Canadians can afford the cost of basic mandatory automobile insurance and how motorists can come to acceptance of the realistic and reasonable cost of insurance to pay for the injuries caused by insured motorists?

The Task Force says the first step for the Atlantic Premiers is to explain to all constituents that motorists and traffic injured must recognize their mutual responsibility to each other to make their respective financial burdens affordable. While the small percentage of catastrophically injured have already accepted restriction upon their recovery for this purpose, the majority of traffic injured have yet to come to terms with such limits. By the same token, motorists must pay reasonable sums for the benefit of traffic injured to provide reasonable compensation for the not severely injured.

As for the other service providers in the system, they should provide answers to the traffic injured and the paying motorists now and on an ongoing basis about what cost cutting strategies they could promote in their own arenas to ease the mutual financial needs of motorists and traffic injured. The premiers should be very firm in implementing strong measures to require service providers to account for the value they provide to the system, and if the value has diminished or disappeared, those roles, if they cannot be revitalized, must be eliminated.

Main Solution to Control Premium Escalation

Once the problem is reframed as one of the necessity of controlling bodily injury loss costs, it can be seen that motorists and traffic injured are in an enduring interdependent relationship. It is fair to say that each group owes a duty to conduct itself so as to ensure reasonable financial expectations to the other. Just as no one stakeholder or service provider can solve the problem alone, no one solution can succeed long term without the cooperation of all. From these principles, it can be quickly seen that there is no one correct solution to keep premiums affordable. It can also be seen a multipronged group of solutions may bring the problem under control only for the short term.

To attain the long-term stability of premiums, there must also be put into place ongoing mechanisms to ensure continual calibration of the balance between the needs of motorists and the needs of traffic injured.

In the short term, the Task Force has concluded that the main solution to controlling premium increases is an immediate focus on reducing claims costs. This can be achieved in part by a redesign of the compensation system to reduce as far as possible the claiming behavior and mechanisms that have become embedded in the existing model. The principle must be based on recognition of reducing the tort components as far as possible while maintaining the appropriate balance between cost of premiums and necessity of reasonable compensation.

While this Task Force agrees with and supports the concept of a multipronged approach to control premium costs while providing the most reasonable and effective rehabilitation to traffic injured, there must be no confusion that all other strategies are only secondary, and are able to assist in maintaining the control of future premiums, once the primary problem is addressed.

Findings on Philosophy of Ratemaking

The Task Force notes that there is currently in Canada much philosophical debate on the subject of auto insurance ratemaking, which is the system by which driving risks are judged and thus premium prices are determined. One philosophy is that experience risk rating according to sound actuarial and insurance principles is the fairest to motorists. Another philosophy holds that regarding the mandatory insurance product, the pricing method must be subject to conditions that are simple to understand and accord with socially acceptable notions of fairness. The clearest illustration is the rating factors of gender and age. These factors would be defensible and acceptable according to actuarial and insurance principles because they can be shown on statistical evidence to be reliable indicators of future loss risks. However, these factors have been said to be offensive and unacceptable as means to prejudge motorists in Canadian society. The studies conducted in Canada support effective risk rating as the fairest methodology to motorists subject to the provision that unacceptable rating variables be prohibited.

In this context, it must be said that while it is considered socially unacceptable to prejudge new drivers by regard to their age and gender, as it appears to be unfairly discriminatory, on the other hand, the prohibition against the use of gender and age in fact results in a form of discrimination against large groups of drivers because they will pay more than statistically justified in the name of achieving the goal of social tolerance. The Atlantic Premiers will not find a resolution to this vexing dilemma that will satisfy all groups in society because the arguments on each side of this debate are serious, enduring and have real and measurable impacts on specific motorists. The Task Force can only recommend that subject to rating variables the public agree ought to be prohibited, as far as possible, experience risk rating should be utilized in the Atlantic Provinces to achieve the highest level of fairness to motorists who purchase compulsory basic insurance.

Findings on Balancing Principles of Compensation, Availability and Affordability

The Task Force has carefully considered the data and studies of the many and varied benefit schemes. It has not failed to note that the reconfiguration of benefit schemes is a live issue in many Canadian provinces at the present moment as well as in other countries. It is well aware that there has been intense debate over the notion of restrictions, whether those are described as deductibles, caps or thresholds, to restrict monetary recovery. The Task Force repeats what was emphasized earlier in these findings. Traffic injured, who have sustained something less than catastrophic injuries, must accept reasonable limits on their monetary compensation.

The Task Force concluded that this question cannot be considered separate from the problem of controlling premiums and that the issue must be focused as follows: What should be the characteristics of a benefit system to provide reasonable compensation to the traffic injured while maintaining the companion goals of availability and affordability of premiums?

All Canadians well understand that there never was, is not now and will never be enough money compensation to make whole each person injured wrongly in a traffic accident. That said, reasonable Atlantic Canadians would agree that where there cannot be enough for all, the system must strive to provide as much as is necessary and proper for the needs of those who have sustained the most devastating injuries. The cost is ever increasing to that group, even though that group is small in number. It is ironic that the catastrophically injured have had a cap imposed upon their pain and suffering by the Supreme Court of Canada in 1978 and since that time there has been no debate of this restriction by the traffic injured in Canada.

However, if the catastrophically injured in Canada have agreed to accept that cap upon their most profound pain and suffering and loss of enjoyment of life, it behooves all remaining Atlantic Canadian traffic injured, whose pain and suffering, while still real, is less than devastating, to now accept reasonable limits on their monetary compensation. This adjustment in expectations is required to attain a fair distribution of the scarce monetary resources to the catastrophically injured and to attain a balance so that as many motorists as possible afford the mandatory basic auto insurance that pays for those injuries.

If the greatest priority to Atlantic Canadians is premium cost, then it would be argued that the preferences for a compensation model should rank the pure or nearly pure no fault compensation model the highest and the maximum tort enhanced benefits model lowest.

Findings on restoring the Balance between the cost of premiums and benefits

This Task Force agrees with the comments in the report of the Alberta Automobile Insurance Board: (p 118-119):

> **"The Board emphasizes there is no one perfect automobile insurance system. Each model presumes certain compromises of benefits in order to assure more acceptable premium costs. Each group admitted that trade-offs were necessary and elimination of benefits did not meet with approval of all groups of consumers."**

It further noted:

> **"First, the transformation of an automobile insurance market is a significant undertaking. In the automobile insurance market, systemic changes can cause market dislocation and instability. These conditions have negative effects on both automobile insurance consumers and suppliers. Second, the overhaul of an automobile insurance system can be costly. Moreover, the costs have to be borne ultimately by the automobile insurance consumers. Finally, the current system may not require radical changes to cure the present deficiencies."**

The Task Force notes the current efforts by Atlantic Premiers to provide relief from the pressure of escalating premiums. It is vital that all those affected by the compulsory auto insurance scheme appreciate that there are multilateral competing interests to be addressed in addition to those of the traffic injured and motorists and that collaboration in the process of restoring the balance will best achieve that goal. It is equally important for all groups affected to appreciate that a series of ongoing adjustments will likely be required to minimize the disruption and dislocation that results from redesign of an insurance system.

The motoring public should be made aware that the recent legislative initiatives will promote stability in the short and medium term, even while individual motorists may not instantly see the effects. Atlantic Canadians as a whole, including the prospective traffic injured, should be advised that the goal of long-term premium stability requires a dedicated ongoing adjustment process, with continual modifications and calibrations of structural adjustments, scheme goals and individual expectations.

Findings on Harmonized Atlantic Provinces Regulatory Scheme

The Task Force is comprised of representatives of each of the Atlantic Provinces. Its members have reported that each province has had the same experience with sudden and unacceptably high escalation of premiums. It has compared the demographic characteristics of the Atlantic Provinces with those of the other Canadian provinces and territories in terms of population, number of insured private passenger vehicles, compensation model, type of supplier and mode of regulation of compulsory automobile insurance.

It notes that the combined population of the Atlantic Provinces is nearly twice that of Manitoba and Saskatchewan, about half that of British Columbia and two thirds that of Alberta. The total population and number of insured private passenger vehicles in Atlantic Canada makes the total region more comparable to any of the Prairie Provinces. Collectively, it seems the Atlantic Provinces could achieve meaningful economies of scale for the motoring public and traffic injured by consolidating their automobile insurance rating processes and personnel into a centralized force.

The work of this Task Force demonstrated very forcefully the degree of compatibility and similarity of issues, problems and solutions that could be addressed to the benefit of each Atlantic province by joining forces and working collaboratively to achieve a whole greater than the sum of its parts.

The Task Force notes that there already exists harmonization in many, but not all areas touching on automobile insurance. For example, the automobile insurance policies and related forms are already standardized.

In other areas, it may be possible to harmonize, even where there are differences among the provinces. For example, the Task Force sees a potential to harmonize in the case of territories. Perhaps they could and should be redefined so as to allow regional areas between provinces to stand as one territory. In other cases, it may be possible to achieve harmonization, even without uniformity. As an example, Newfoundland and Labrador have optional accident benefits, where they are mandatory in all other provinces. It is conceivable that harmony can be achieved in this case by showing a 0 premium in the case of Newfoundland and Labrador.

However, in other areas, such as benefit structures, there is not yet harmonization. For example, all other Atlantic Provinces have introduced a cap of $2500, whereas in Newfoundland and Labrador the consumer may buy out of the cap. In this respect, all Atlantic Provinces have been moving toward convergence in the matter of tort restriction. However, Newfoundland and

Labrador have moved more boldly in controlling and restricting tort by eliminating the compulsory coverage for bodily injury as it relates to third party liability and instead pronouncing that the delivery of personal injury liability coverage is optional for purchase by the public.

The area of benefit structure is a substantive matter and likely could not attain harmonization without a conversion by one or more provinces to the model of the others. However even in this respect, adoption of one model by three Atlantic Provinces could produce a hardship in the case of the one that did not accept that model.

Assuming the possibility of harmonizing substantive issues such as the nature of the supplier and the nature of the compensation model, the Task Force considers a common regulator for the region would be necessary and desirable. It cautions that savings from such an endeavor will be sufficient only if there are uniform coverages, uniform rating practices and procedures such that there will be efficiencies shared by all. If there were a common regulator, then it would follow that a common regional process would attain savings by conducting one set of common hearings, with common filings and procedures. Such a regime would require only one set of expert consultants such as actuaries or administrators and its office would monitor one common set of underwriting policies, and approved rating variables.

Moreover, a common regulator could implement a harmonized strategy to bring about trend control by a series of focussed interventions to reduce bodily injury loss costs meaningfully in short and long term by encouraging a cultural attitude shift in driving behaviour and injury management.

A harmonized Atlantic Canada approach could achieve clear economies of scale in road safety advertising, photo radar, drunk driving, by integration of strategies among insurers, law enforcement and legislation.

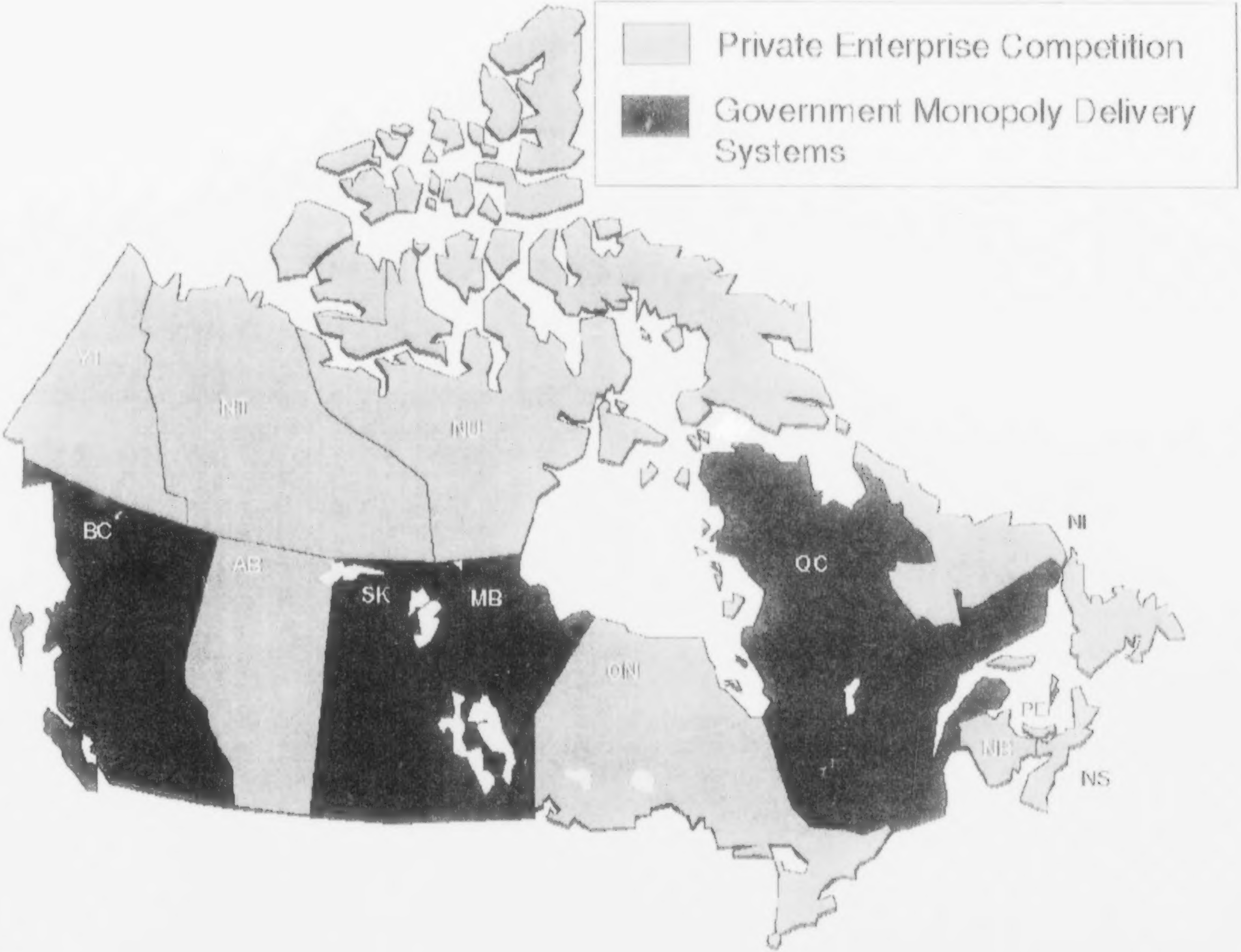
SUMMARY

The Task Force concludes that a harmonized regulatory review board could be created to monitor the issues touching on compulsory automobile insurance rating on behalf of all. The Task Force envisions a board with appropriate representation from each Atlantic province.

Automobile insurance rating of compulsory automobile insurance requires ongoing calibration and adjustment. It requires regular communication with Superintendents, with Governments, with industry including insurers, agents and brokers, adjusters, automotive intermediaries, medical and rehabilitation and legal service providers.

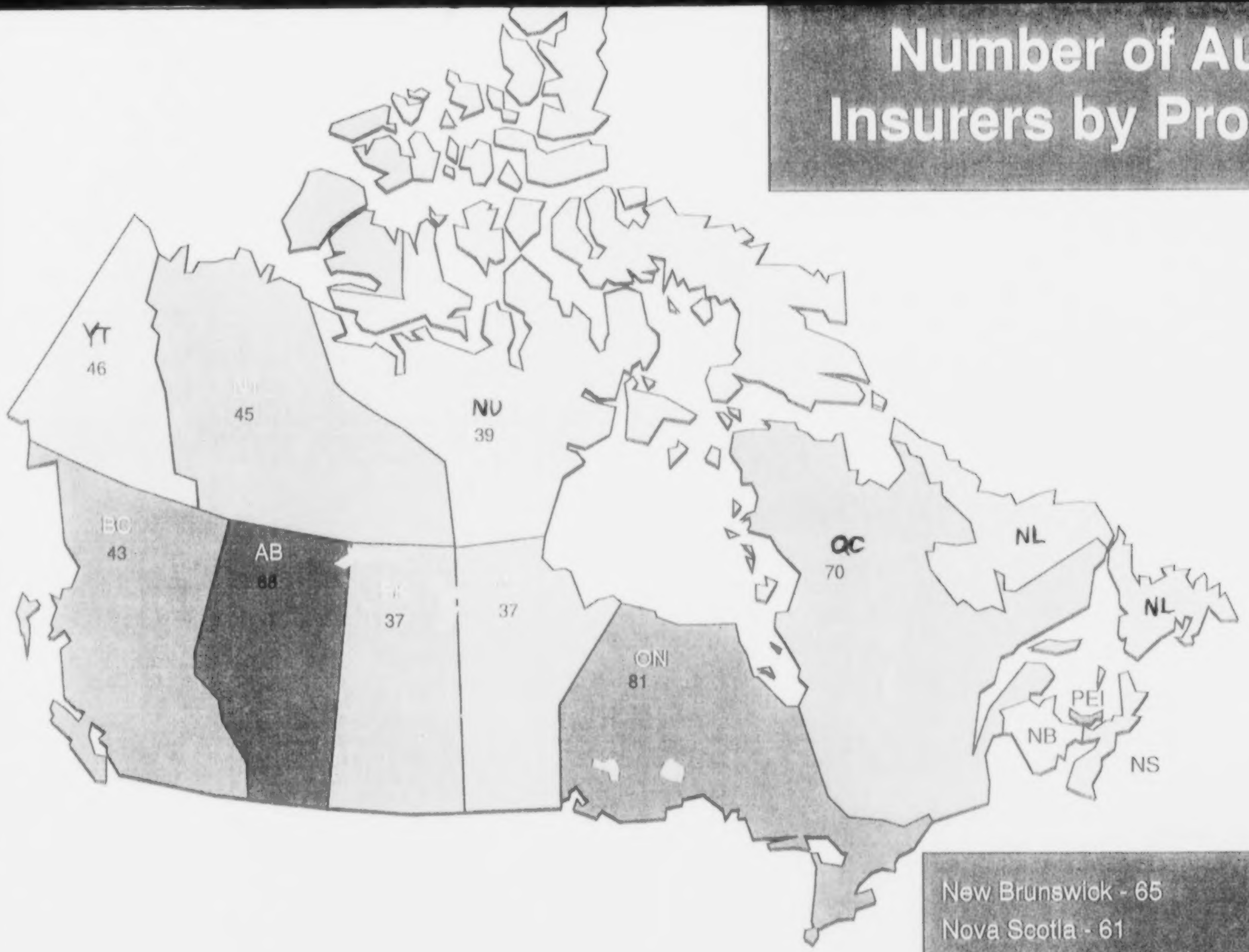
It requires consultation by experienced regulatory experts who have the depth of knowledge and technical capabilities to achieve the requisite balance among all those who contribute to the operation of an automobile insurance delivery system. Such a board would have the statutory authority to act where any one or group of service providers were not acting in accordance with the spirit and intent of the legislation to protect the motoring public and traffic injured. A draft model Act to establish such a board is attached as Appendix B.

GRAPHS


Private Enterprise Competition
Government Monopoly Delivery Systems
YT
NT
NU
BC
AB
SK
MB
ON
QC
NL
PE
NB
NS

Graph 1

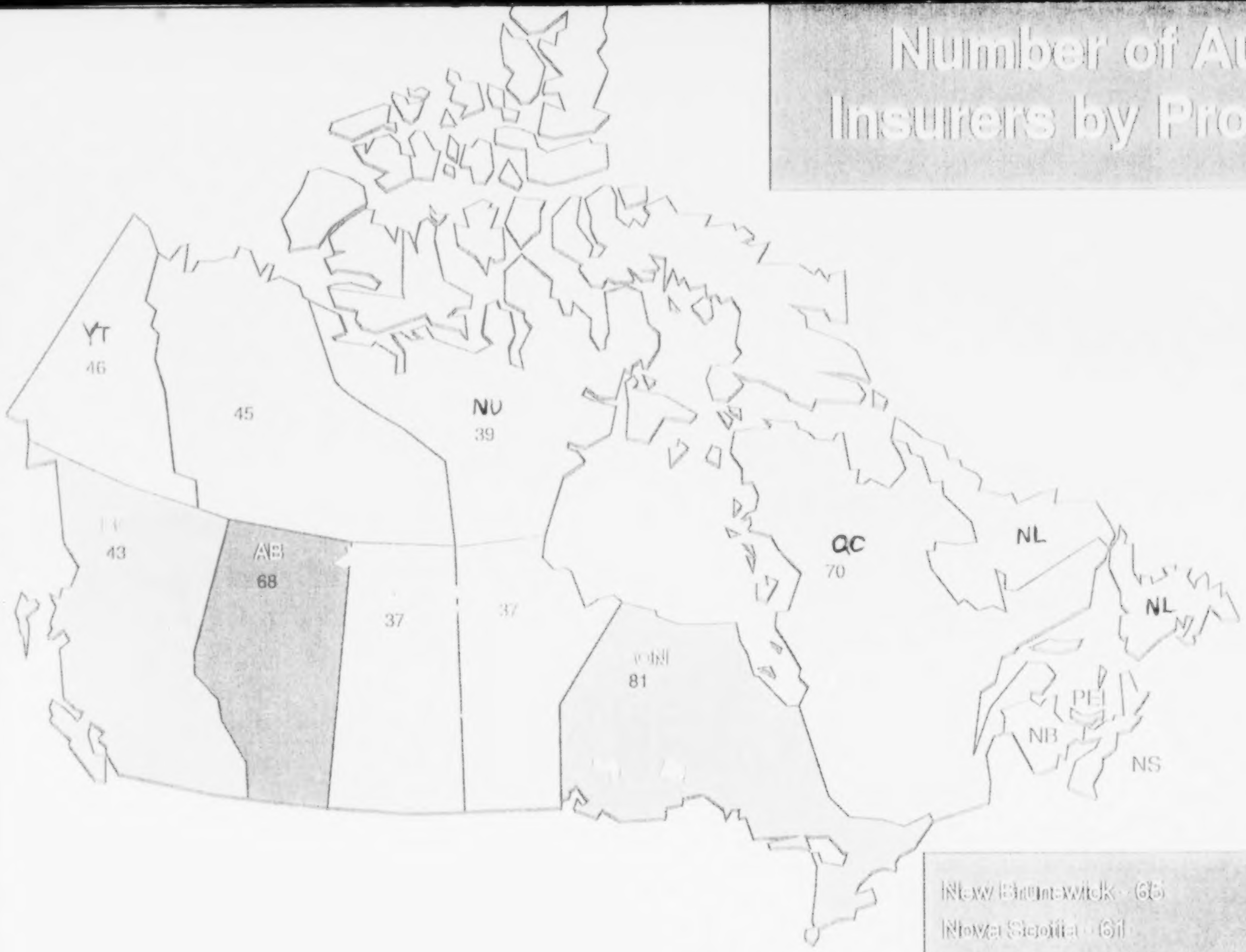
Number of Auto Insurers by Province



New Brunswick - 65
Nova Scotia - 61
Prince Edward Island - 46
Newfoundland and Labrador - 45

Graph 2

Number of Auto Insurers by Province



New Brunswick - 66

Nova Scotia - 61

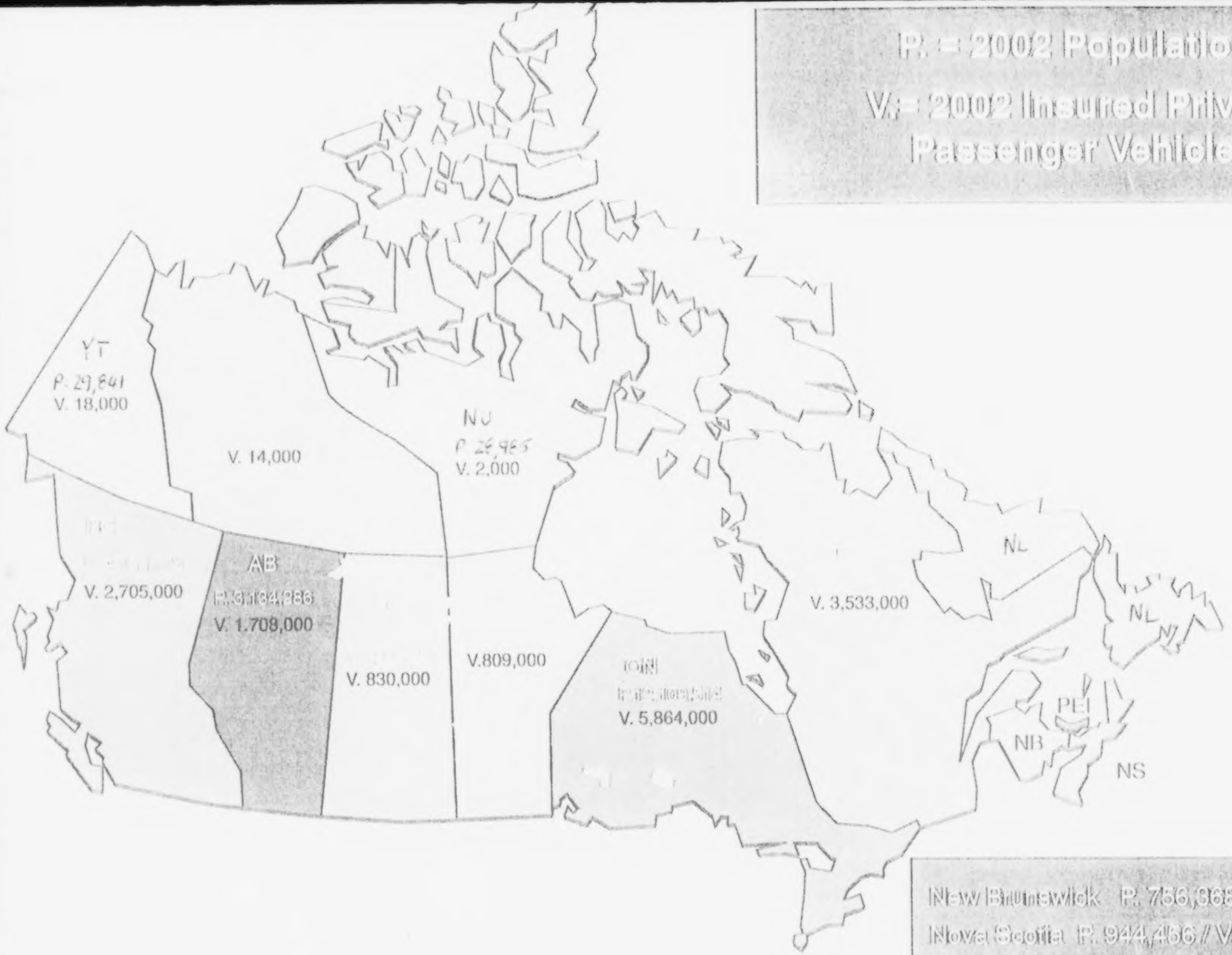
Prince Edward Island - 46

Newfoundland and Labrador - 45

Graph 2

P. = 2002 Population

V. = 2002 Insured Private Passenger Vehicles



New Brunswick P. 756,868 /V. 389,000

Nova Scotia P. 944,456 / V. 462,000

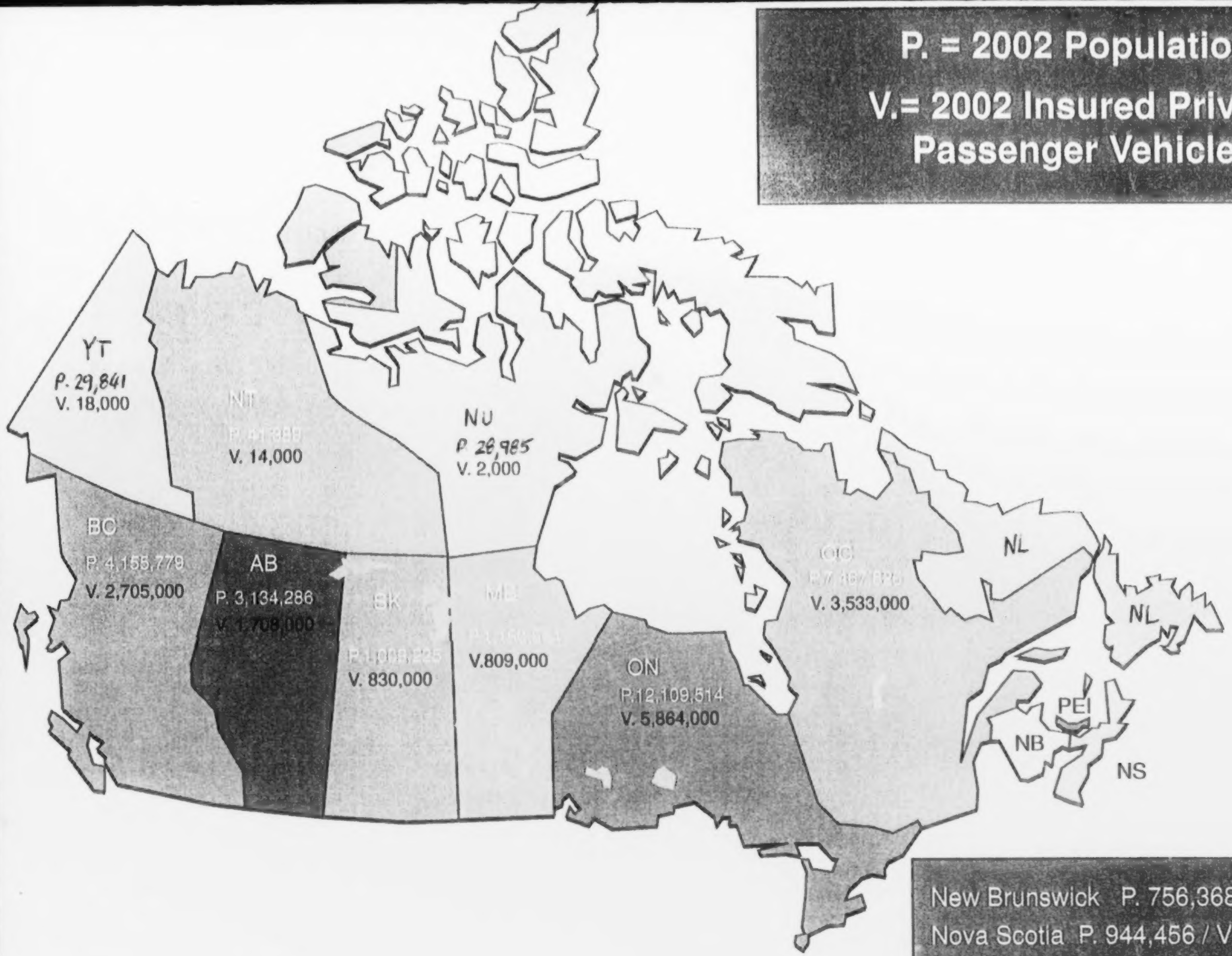
Prince Edward Island P. 140,412 / V. 71,000

Newfoundland and Labrador P. 531, 145 / V. 217,000

Graph 3: Map of Canada

P. = 2002 Population

V.= 2002 Insured Private Passenger Vehicles



New Brunswick P. 756,368 /V. 389,000

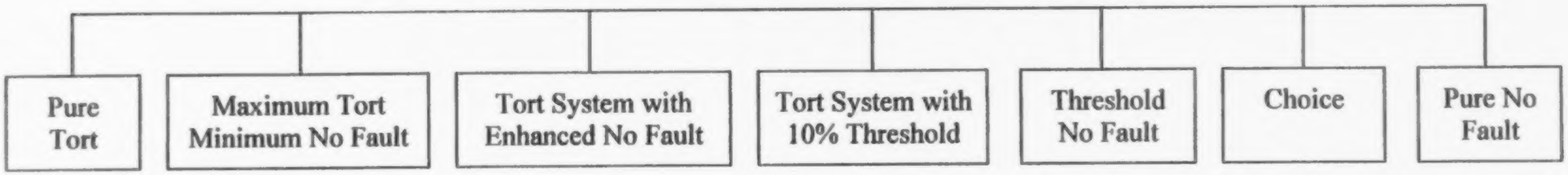
Nova Scotia P. 944,456 / V. 462,000

Prince Edward Island P. 140,412 / V. 71,000

Newfoundland and Labrador P. 531, 145 / V. 217,000

Graph 3: Map of Canada

ALTERNATIVE COMPENSATION MODELS


Pure Tort
Maximum Tort Minimum No Fault
Tort System with Enhanced No Fault
Tort System with 10% Threshold
Threshold No Fault
Choice
Pure No Fault

Graph 4

Table 1: Auto Insurance Systems and Results by Province (2002)

	AB	BC	MB	NB	NF	NWT & Nunavut	NS	ON	PEI	PQ	SK	YK
Administration	Private	Public w/ private competition for optional & excess coverage	Public w/ private competition for optional & excess coverage	Private	Private	Private	Private	Private	Private	Public for Bodily Injury; Private for property damage	Public w/ private competition for optional & excess coverage	Private
Compulsory minimum 3rd party liability	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$50,000	$200,000	$200,000
Medical payments	$10,000; chiropractic $500/person, time limit 2 yrs	$150,000	No time or amt. Limit, includes rehab.	$50,000/person, time limit 4 yrs.	$25,000, time limit 4 yrs.	$25,000/person, time limit 4 yrs	$25,000/person, time limit 4 yrs	$100,000/person ($1 million if injury catastrophic)	$25,000/person, time limit 4 yrs.	No time or amount limit	$5,000,000/person	$10,000/person, time limit 2 yrs
Funeral expense benefit	$2,000	$2,500	$6,644	$2,500	$1,000	$1,000	$1,000	$6,000	$1,000	$3,851	$5732	$2,000
Maximum Disability Benefits	$300/wk, 80% of gross wages	$300/wk, 75% of gross wages	$63,000/yr, 90% of gross wages; indexed	$250/wk	$140/wk	$140/wk, 80% of gross wages	$140/wk.	80% of net wages to max. $400/wk, $185/wk if not employed	$140/wk.	90% of net wages; max income gross $52,000/yr; indexed	90% of net wages; max. income gross $57,788/yr; indexed	80% gross wages; max $300/wk.
Time Period	104 wks total disability	104 wks temp, lifetime total disability		104 wks partial, lifetime if total	104 wks partial. Life if total.	104 wks temp. disability, lifetime if totally disabled	104 wks, partial, lifetime if total disability	104 wks max, longer if unable to pursue any suitable occupation	104 wks, partial disability, to age 65 if totally disabled	temp 3 yrs.; lifetime if permanently disabled		104 wks, temp or total disability
Right to sue for pain & suffering	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes, with qualifications	Yes	No	Yes, unless on PIPP no-fault system	Yes
Right to sue for economic loss exceeding no-fault benefits	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes, with qualifications	Yes	No	Yes, but award is reduced by other insurance benefits	Yes

Lawsuits are not permitted with respect to injuries sustained in automobile accidents in Quebec. Victims are compensated by their government insurer for their injuries whether or not the accident occurs in Quebec.

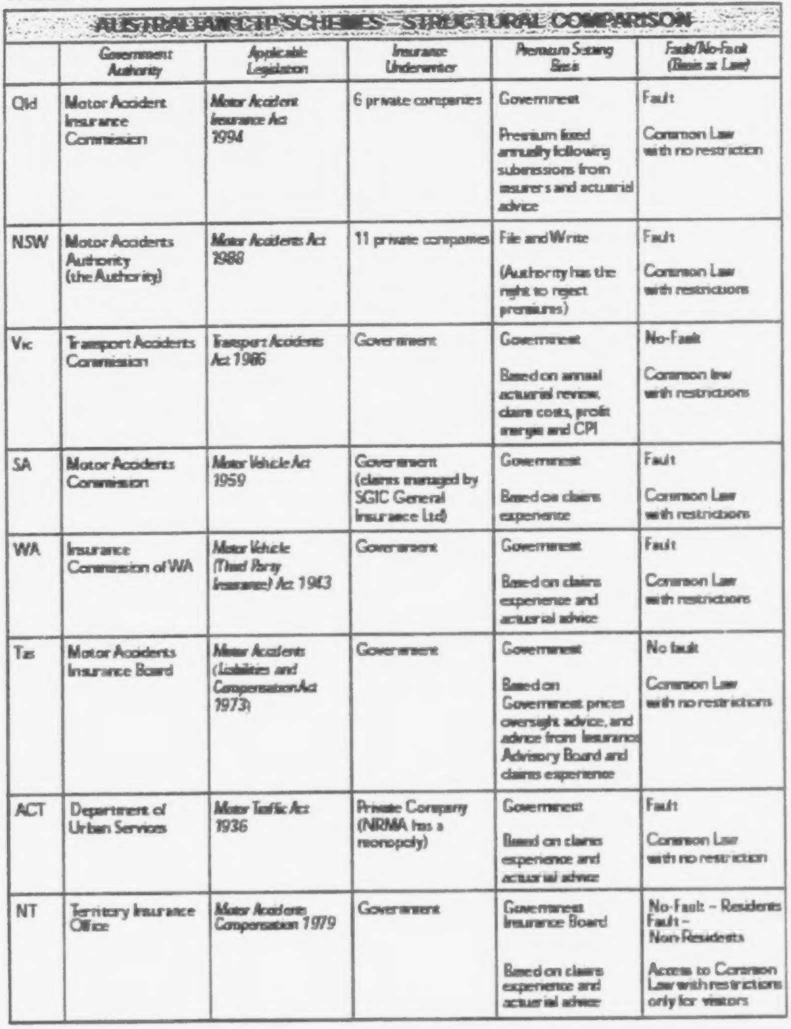
Graph 5: Table from Auto Insurance Reform for Canada's Tort Provinces, a Working Paper 2003-05 by Norma L. Nielson, Ph.D. and Anne E. Kleffner, Ph.D.

Composite Evaluation of Options

	MAXIMUM TORT	ADD-ON	THRESHOLD	CHOICE	PURE NO-FAULT
Deterrence	1	2	3	4	5
Compensation (Coverage)	5	1	2	4	3
Compensation (Internalization)	1	2	3	4	5
Operational Efficiency	5	4	2	3	1
Premium Costs	4	5	2	3	1
TOTAL	16 (3.2)	14 (2.8)	12 (2.4)	15 (3.0)	19 (3.6)

Graph 7

TABLE 14



AUSTRALIAN CTP SCHEMES – STRUCTURAL COMPARISON					
	Government Authority	*Applicable Legislation*	*Insurance Underwriter*	*Premium Setting Basis*	*Fault/No-Fault (Basis at Law)*
Qld	Motor Accident Insurance Commission	*Motor Accident Insurance Act 1994*	6 private companies	Government Premium fixed annually following submissions from insurers and actuarial advice	Fault Common Law with no restriction
NSW	Motor Accidents Authority (the Authority)	*Motor Accidents Act 1988*	11 private companies	File and Write (Authority has the right to reject premiums)	Fault Common Law with restrictions
Vic	Transport Accidents Commission	*Transport Accidents Act 1986*	Government	Government Based on annual actuarial review, claims costs, profit margins and CPI	No-Fault Common law with restrictions
SA	Motor Accidents Commission	*Motor Vehicle Act 1959*	Government (claims managed by SGIC General Insurance Ltd)	Government Based on claims experience	Fault Common Law with restrictions
WA	Insurance Commission of WA	*Motor Vehicle (Third Party Insurance) Act 1943*	Government	Government Based on claims experience and actuarial advice	Fault Common Law with restrictions
Tas	Motor Accidents Insurance Board	*Motor Accidents (Liabilities and Compensation Act 1973)*	Government	Government Based on Government prices oversight advice, and advice from Insurance Advisory Board and claims experience	No fault Common Law with no restrictions
ACT	Department of Urban Services	*Motor Traffic Act 1936*	Private Company (NRMA has a monopoly)	Government Based on claims experience and actuarial advice	Fault Common Law with no restriction
NT	Territory Insurance Office	*Motor Accidents Compensation 1979*	Government	Government Insurance Board Based on claims experience and actuarial advice	No-Fault – Residents Fault – Non-Residents Access to Common Law with restrictions only for visitors

Graph 8: Table 14 from Review of Queensland Compulsory Third Party Insurance Schemes Report

3a. PRODUCT– NO FAULT

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
I) No Fault Applicable	Yes	No	No	No	No	Yes	No	NT residents only	
II) Definition of Accident	incident directly caused by the driving					"Where personal injury results directly from the driving of, or collision with a motor vehicle"		caused by or arising out of the use of	
III) Benefits & Compensation									
❖ Medical & Rehabilitation	Reasonable costs. Family Excess: $462			[illegible]	[illegible]	$200,000 *Unlimited if >2 hours care a day required*		Reasonable costs	
❖ Income Benefits									
Excess *days not covered*	first 5 days					first 7 days		Accident day	
Maximum	80% earnings up to $739 pw LOE $824 pw LOEC					80% earnings, up to 4.25 AW		85% of avg earnings of wage earners net of tax.	
Time Limit	18 mths LOE [9] 3 years LOEC [10]					2 yrs usual work 5 yrs any work		None	
❖ Impairment									
Lump Sum Payment	$812 for each % point imp't. > 10%					None		AWE ($817.60) x 208 x % Imp. >5%	
Impairment Annuity	Yes [11] varies considerably depending on each % point imp. > 10% and age								

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[6] as reported by schemes
[7] agreement with Health Department (not a legislative requirement) to cover the cost of emergency public hospital treatment and transport
[8] agreement to cover Ambulance Costs on a No Fault basis
[9] loss of earnings, payable for up to 18 months (taxable)
[10] loss of earnings capacity (non taxable) payable up to 3 years if impairment 50% or less (to retirement age if impairment 50% or more) not payable after settlement of pecuniary loss damages
[11] payable after 18 months only if no LOEC payments are being received; not payable after settlement of pecuniary loss damages; payments cease at 3 years unless more than 50% impaired in which case payments can continue to age 75

N.B. Shaded areas throughout this document mean that information is not available or not applicable to that respective State.

Graph 9a: Australian CTP Scheme Comparison Table

3a. PRODUCT– NO FAULT

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
i) **No Fault Applicable**	Yes	No	No	No	No	Yes	No	NT residents only	
ii) **Definition of Accident**	incident directly caused by the driving					"Where personal injury results directly from the driving of, or collision with a motor vehicle"		caused by or arising out of the use of	
iii) **Benefits & Compensation**									
✧ Medical & Rehabilitation	Reasonable costs. Family Excess: $462			[illegible]	[illegible]	$200,000 *Unlimited if >2 hours care a day required*		Reasonable costs	
✧ Income Benefits									
Excess *days not covered*	first 5 days					first 7 days		Accident day	
Maximum	80% earnings up to $739 pw LOE $624 pw LOEC					80% earnings, up to 4.25 AW		85% of avg earnings of wage earners net of tax.	
Time Limit	18 mths LOE [9] 3 years LOEC [10]					2 yrs usual work *5 yrs any work*		None	
✧ Impairment									
Lump Sum Payment	$812 for each % point imp't. > 10%					None		AWE ($817.60) x 208 x % Imp. >5%	
Impairment Annuity	Yes [11] varies considerably depending on each % point imp. > 10% and age								

---

[6] as reported by schemes

[7] agreement with Health Department (not a legislative requirement) to cover the cost of emergency public hospital treatment and transport

[8] agreement to cover Ambulance Costs on a No Fault basis

[9] loss of earnings, payable for up to 18 months (taxable)

[10] loss of earnings capacity (non taxable) payable up to 3 years if impairment 50% or less (to retirement age if impairment 50% or more) not payable after settlement of pecuniary loss damages

[11] payable after 18 months only if no LOEC payments are being received; not payable after settlement of pecuniary loss damages; payments cease at 3 years unless more than 50% impaired in which case payments can continue to age 75

N.B. Shaded areas throughout this document mean that information is not available or not applicable to that respective State.

Graph 9a: Australian CTP Scheme Comparison Table

3b. PRODUCT– COMMON LAW

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
i) States Applicable	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
ii) Definition of Accident	Indemnity - arising out of the use	· caused by fault in use or operation · injury to arise from driving, collision or out of control	driving, out of control, collision or defect causing loss of control	directly caused by or by the driving of a motor vehicle	Driving, vehicle running out of control, or person travelling on road colliding with vehicle when stationary, or action taken to avoid collision	"Where personal injury results directly from the driving of, or collision with a motor vehicle"	caused by or arising out of the use of the motor vehicle in any part of the Commonwealth	caused by or arising out of the use of ..	
iii) Benefits & Compensation ◆ Access	Serious injury	Pain & Suffering - > 10% permanent impairment	No restrictions (except for legal costs on smaller claims)	Threshold for Pain and Suffering	Threshold for eco loss (see below). All reasonable treatment expenses paid. 1st week of eco loss not paid.	No restrictions	No restrictions	Non-NT residents only	
◆ Pecuniary Loss Threshold Maximum	$36,030 $810,820	None 2,712 net per week	None 3 times AWE	None Unlimited	See above $2.2M *(subject to CPI)*	None 4.28 AW	None Unlimited	None Unlimited	
◆ Pain & Suffering Threshold Maximum	$36,030 $380,360	None $290,000	None Unlimited	$12,000[12] $240,000	See footnote[13] $102,600	None Unlimited	None Unlimited	None $170,060.80	
◆ Excess	Nil	$500 excess on insured if ≥ 25% at fault	Nil	No	$300 excess on insured if >25% at fault	No	No	No	
iv) Discount rate	6%	5%	5%	6%	5%	7%	3%	6%	
v) Limitation of Actions	6 years	3 years, unless leave of court given [14]	3 years (For adults)	6 years (For adults)	3 years (For adults)	3 years 6 years on applic. to court	6 years	3 years	

---

[12] deductible on awards up to $36,500; phased out from $36,500 to $48,500; no deduction after $48,500

[13] significant impairment for >= 7days or >=$2,750 medical expenses, subject to cpi (Note: effective 1 January 2003, under a revised scheme, the max. for P&S will be $241,500, subject to CPI)

[14] leave must not be granted unless full and satisfactory explanation is given and the total damages are likely to be over 25% of maximum for non-economic loss. If a matter is going through assessment at Claim Assessment & Resolution Services (CARS), limitation period does not run until 2 months after a certificate of assessment or exemption is issued.

Graph 9b: Australian CTP Scheme Comparison Table

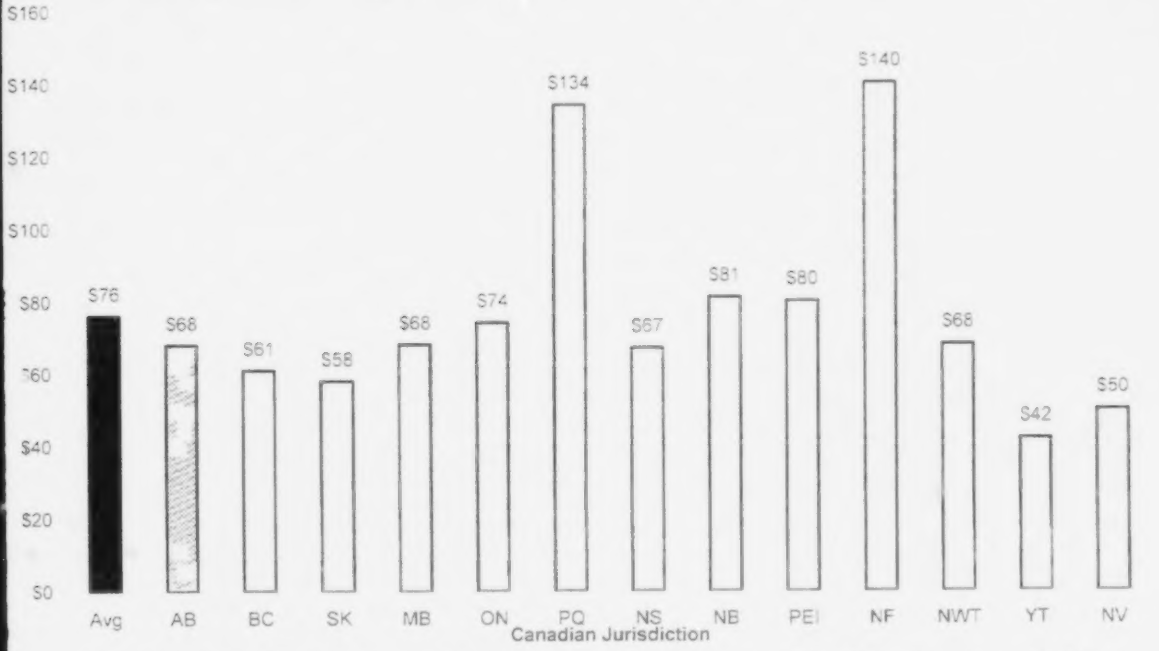
Province	**Population**	**# of Insured Vehicles**	**# Insurers**	**# of Insurance Brokers**
Nova Scotia	944,456	462,000	61	1287
New Brunswick	756,368	389,000	65	815
Nfld and Labrador	531,145	217,000	45	618
Prince Edward Island	140,412	71,000	46	103

Proportion of Canadian Auto and Total Direct Earned Premiums Represented by Atlantic Canada (2002)

Line	**Atlantic Canada - Direct Earned Premiums ($ millions)**	**Total Canada - Direct Earned Premiums ($ millions)**	**Proportion Represented by Atlantic Canada**
Auto	958	11,003	8.7%

Graph 12: Current relevant insurance statistics re: Atlantic Canada

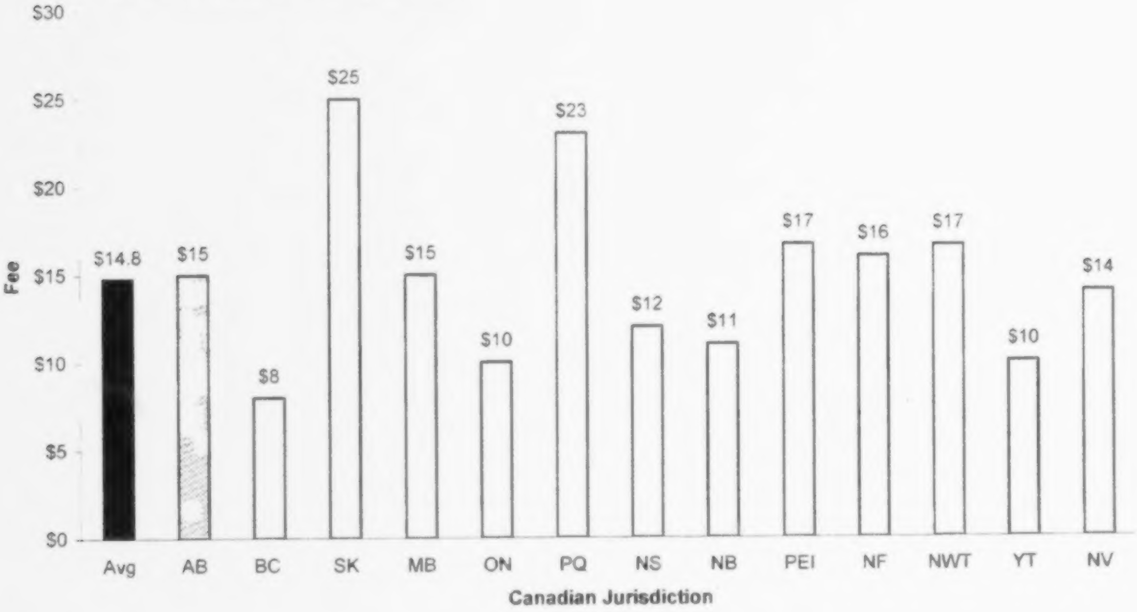
Vehicle Registration Comparison*



*Survey was standardized for comparative purposes to represent the annual fee charged to renew a Ford Taurus sedan weighing 3,294 pounds in an urban area (includes service/administrative fees).

***aph 13*:**

Driver's License Comparison*



*Survey was standardized for comparative purposes to represent the annual fee for a driver's license with no demerits (includes service/administrative fees).

Graph 14:

EARNED 2002

	Earned Premium divided by	Number of Insured Vehicles	Average Earned Premium
Province:			
Ontario	6,024,467,000	5,863,803	$1,027.40
Manitoba	641,471,000*	810,611*	721.36*
British Columbia	1,608,642,000* (includes commercial and other classes)	2,705,000*	522.00* (includes $38.00 government costs)
New Brunswick	365,108,709	388,873	938.89
Newfoundland	185,757,892	216,689	857.26
Nova Scotia	368,968,602	461,752	799.06
Prince Edward Island	51,839,617	70,897	731.20
Alberta	1,610,922,402	1,708,346	942.97
Saskatchewan	468,000,000*	830,000*	566*
Quebec	1,965,217,971	3,579,141	549.07

* ***author of this report unable to independently validate figure cited.***

Graph 15:

2002

	Total Claims divided by	**Number of Insured Vehicles**	**Average Loss Costs**
Province:			
Ontario	5,442,818,151	5,863,803	$928.20
Manitoba	449,522,585	629,557	714.03
British Columbia	2,193,492*	2,705,000*	395.00*
New Brunswick	327,334,321	388,873	841.76
Newfoundland	142,422,885	216,689	657.27
Nova Scotia	317,833,077	461,752	688.32
Prince Edward Island	40,530,329	70,897	571.68
Alberta	1,300,072,077	1,708,346	761.01
Quebec	687,500,000*	3,652,945*	*
Saskatchewan	*	830,000*	2846*

* author of this report unable to independently validate figure cited.

Graph 16:

Justice
Insurance Branch

Justice
Direction des assurances

Appendix A

New
Nouveau Brunswick

September 22, 2003

Mr. Fred Morash, Chair
Atlantic Insurance Harmonization Task Force
c/o Mr. Ed Cramm, Secretary
Council of Atlantic Premiers
P.O. Box 2044,
Halifax, Nova Scotia
B3J 2Z1

Dear Mr. Morash:

RE: Transmittal of Harmonized Model Insurance Act for Atlantic Canada

I am pleased to be writing on behalf of the provincial Superintendents of Insurance in Atlantic Canada to formally transmit the attached "Model Act" to the Atlantic Premiers through the Atlantic Insurance Harmonization Task Force.

The Atlantic Superintendents, along with many others from industry, the legal community and consumer groups, have devoted considerable effort to developing this Model Act over a number of years, under the mandate of the Council of Atlantic Premiers. We believe the result will be a landmark in Canada. The transformation into legislation of this detailed policy document, and the regulatory proposals that will follow, will place Atlantic Canada in the forefront of insurance regulatory harmonization. We are also pleased to report that in pursuing the objective of legislative harmonization, we have also up-dated the Act to reflect the current environment, and enhanced consumer protection measures.

The Superintendents wish to bring to your attention to a few outstanding issues that will be addressed in the near future, either during the drafting process or through future amendments to the new legislation. They are:

- Powers of Attorney – A proposal by the Canadian Life and Health Insurance Association respecting insurers responsibilities in relation to life policies where a Power of Attorney document exists requires further research.

...2

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- Third Party Warranties – These "insurance" arrangements are inadequately addressed by current legislation, but models from other jurisdictions raise concerns about additional administrative responsibilities. This will be discussed further, following completion of a British Columbia review of the issue.

- Classes of insurance - The Canadian Council of Insurance Regulators endorsed classes of insurance and accompanying definitions in 2002. Subsequent questions, however, resulted in further work, which now is close to completion. The introduction of new, harmonized classes and their impact on the act as a whole will need to be addressed during the drafting phase.

- Fire Part of the Act – Recent Supreme Court of Canada decisions have effectively eliminated the application to multi-peril policies of the provisions that have been included in the Model Act. The Canadian Council of Insurance Regulators is working with industry on the development of amendments to address this problem. This process may also affect the Insurance Contracts part of the Model Act.

As you are aware, efforts to harmonize Part 9 of the Model Act respecting Automobile Insurance have been hampered by reviews of the automobile insurance system, beginning with the 1998 report of the Select Committee to Review the Property and Casualty Insurance Industry in Newfoundland, and more recently by various provincial legislative amendments. However, the Part 9 that appeared in earlier drafts of the Model Act has been retained in the final draft as a reference point, and for the convenience of the legislative drafters.

A decision was made in developing the Model Act to put into regulations those elements of the current statute that by their nature would benefit from that more flexible process. As a result, a considerable amount of work remains to be done to develop the required regulations and undertake the consultation that will accompany that process. In view of this remaining work and the challenges of a coordinated legislative drafting process, the Superintendents are recommending that a project manager be assigned to oversee the Insurance Legislation Harmonization Project as it moves to the next stages. This individual should have access to specialized consultants, as required. This would contribute significantly to the expeditious completion of the project and ensure that critical linkages amongst jurisdictions are maintained throughout the drafting stage.

...3

Finally, on behalf of my colleagues, I would like to thank the Council of Atlantic Premiers for their vision in embarking on the Insurance Legislation Harmonization Project and for their ongoing support of this very important regional initiative.

Yours truly,

Janet H. Cameron

Janet H. Cameron
Superintendent of Insurance
Department of Justice
New Brunswick

cc. Winston Morris, Superintendent of Insurance
Department of Government Services and Land
Newfoundland and Labrador

Catherine Smith, Superintendent of Financial Services
Department of Environment and Labour
Nova Scotia

Robert Bradley, Superintendent of Insurance
Office of the Attorney General
Prince Edward Island

Attachment: Harmonized Model Act - Final Draft - September 4, 2003

Appendix "B"

2003 INSURANCE

Atlantic Automobile Insurance Board

Definitions

In sections ___ to ____,

(a) "Board" means the Atlantic Automobile Insurance Board referred to in section ____;

(b) "basic insurance" means the insurance referred to in section ____;

(c) "rates" means the price charged for a motor vehicle liability policy or any coverage under that policy.

Atlantic Automobile Insurance Board

(1) The Lieutenant Governor in Council may co-establish with other Atlantic Provinces a board to be known as the Atlantic Automobile Insurance Board consisting of the members that the Lieutenant Governor in Council appoints.

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(2) The Lieutenant Governor in Council may

(a) designate one of the members of the Board as vice-chair; and

(b) fix the remuneration and provide for the payment of expenses to be paid to the members who are not employees of the Government.

(3) In accordance with the (Public Service or equivalent) Act there may be appointed the staff and other persons required by the Board.

(4) Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more experts or persons having special technical or other knowledge to inquire into and report to the Board in respect of any matter before the Board or in respect of which the Board considers it necessary to have information for the proper carrying out of its duties.

(5) A person appointed by the Board pursuant to subsection (4) must be paid the remuneration specified by the Lieutenant Governor in Council.

(6) A majority of members constitutes a quorum of the Board for the purpose of exercising its powers and performing its duties.

(7) An order, direction, approval or other instrument that the Board is permitted or required to make may be made on its behalf by the chair, the vice-chair or any other member of the Board.

(8) An order, direction, approval or other instrument purporting to be signed by the chair, the vice-chair or a member of the Board on behalf of the Board is admissible in evidence in any proceedings as prima facie proof

(a) that the order, direction, approval or instrument is the act of the Board or of a quorum of the Board, and

(b) that the person signing it was authorized to do so

without proof of the appointment of the individual signing as a member of the Board, or the individual's designation as chair or vice-chair, as the case may be, or of the individual's signature.

(9) The Board may make rules governing its procedures.

(10) The chair, vice-chair and every other member of the Board has the power of a commissioner under the Public Inquiries Act.

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Board powers

The Board has the power

(a) to investigate any matter it thinks fit respecting automobile insurance in [this Atlantic Province], including rates, benefits and availability of automobile insurance, and

(b) to prohibit

(i) an insurer from charging any rate for the basic insurance above a rate filed pursuant to section ___,

(ii) any change in class of an automobile from the classification of that automobile filed pursuant to section ____ , or

(iii) any change that would have the effect of increasing a rate for the basic insurance for any insured or class of insured or that would have the effect of changing an automobile from one class to another,

unless the increase or change has first been approved by the Board under section ____.

Rates

Every licensed insurer of automobiles must file with the Board the full schedule of rates it intends to apply to every motor vehicle liability insurance policy to be issued by it in [this Atlantic Province] showing separately

(a) the number and types of classes of automobiles proposed to be insured by the insurer in respect of which the basic insurance applies, and

(b) the rates proposed to be charged for the basic insurance with respect to each class of automobile.

Approval of Rates

(1) No insurer may

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(a) change the proposed rates filed under section or any other rate for the basic insurance, or

(b) change an automobile from one class to another or add to or in any manner change the number or type of classes of automobiles filed with the Board,

unless

(c) the Board has approved

(i) the rates,

(ii) the classification of automobiles, and

(iii) the rates attaching to each class of automobile,

or

(d) the rates, the classification of automobiles and the rates attaching to each class of automobile have been filed with the Board for 60 days and the Board has neither approved nor disapproved the filing or any part of the filing.

(2) When an insurer receives an approval or is permitted to proceed pursuant to subsection (1), the insurer must not

(a) increase its rates with respect to the basic insurance either generally or with respect to a particular class of automobile,

(b) change the class of any automobile with respect to the basic insurance, or

(c) make any other change that would have the effect of increasing any rate for the basic insurance or changing any class of any automobile with respect to the basic insurance,

without first applying to the Board and receiving its approval pursuant to subsection (4) or (5).

(3) Where the Board is not satisfied that an insurer has filed all the matters referred to in this section, or requires additional details or information, it may, by order directed to the insurer, require the additional information and details.

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(4) If an insurer wishes

(a) to increase any rate for the basic insurance,

(b) to change the class of any automobile or the number or types of classes of automobile,

to change any rate attaching to any particular class of automobile,

or

(d) to make any other change that would have the effect of increasing any rate for the basic insurance or any change that would have the effect of changing the number or type of class of automobile with respect to the basic insurance, it may apply to the Board for approval of the increase, change of class or classification or the number or type of classes of automobile or any other change, and the Board in its discretion by order may

(e) approve the application or any part of the application, or

(f) disapprove the application or any part of the application.

(5) When an insurer makes an application to the Board pursuant to subsection (4) and the application has not been approved or disapproved during a period of 60 days from the date the application is filed, the application is deemed to have been approved and the increase in rates, change of class or classification of automobile or the type or number of classes of automobile or any other change applied for pursuant to subsection (4) maybe made by the insurer on expiration of the 60-day period.

(6) When an application by an insurer has been approved pursuant to this section, the Board may at any time after the approval investigate

(a) the rates of the insurer for the basic insurance,

(b) the division into classes of automobile and the classification of automobiles and the number and type of classes of automobile with respect to the basic insurance, or

(c) the rates for the basic insurance attaching to any particular class of automobile,

and, despite any prior approval, may order the insurer to reduce or change its rates, to change the classification of any automobile or the class or number or type of automobile or make any other change with respect to the basic insurance in the manner directed by the Board.

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Offences

An insurer who

(a) fails to file its rates pursuant to section ____.

(b) charges the proposed rate prior to its approval in contravention of section _____,

(c) increases the rate payable for the basic insurance in contravention of section _____,

(d) adds to or in any manner changes the class of automobile, the classification of an automobile or the number or type of classes of automobile in contravention of section _____,

(e) makes any change in a rate or class or classification of automobile without approval pursuant to section _____, or

(f) in any manner fails to comply with an order or direction of the Board, is guilty of an offence.

Annual Report

(1) The Board must make and submit to the Minister of [this Atlantic Province] an annual report on the operation of the Board.

(2) The Minister must lay the report before the Legislative Assembly if it is then in session or if it is not, within 15 days of the opening of the next following session.

Appeal

(1) Except as provided in this section,

(a) every decision, order, approval, direction or proceeding of the Board is final, and

(b) no decision, order, approval, direction or proceeding of the Board may be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in any court.

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(2) On a question of jurisdiction or on a question of law pertaining to insurance in [this Atlantic Province], an appeal lies from the Board to the Court of Appeal.

(3) Leave to appeal may be obtained from a judge of the Court of Appeal if

(a) an application is made within one month after the making of the decision, order, approval, direction or proceeding sought to be appealed from, or within any further time that the judge under special circumstances allows, and

(b) notice of the application is given to the parties and to the Board.

(4) The costs of the application are in the discretion of the judge.

Reduced Rate

(1) Nothing in section ___ prevents an insurer from charging a reduced rate for the basic insurance

(a) when a person owns 2 or more automobiles classified for the basic insurance under the same or a different class, or

(b) when a person owns 2 or more automobiles

under 2 or more policies with the same insurer.

(2) Despite subsection (1), when an insurer charges a reduced rate for the basic insurance, the insurer must not increase the rate unless the increase is approved under section _____ .

Application of Government approved industry plan

(1) An insurer licensed under this Act to carry on automobile insurance must participate in and is subject to the terms and conditions of any Government approved industry plan to ensure a market for automobile insurance to all owners of automobiles in [this Atlantic Province] and for operators of automobiles in [this Atlantic Province] who hold operator's licences issued under the [Motor Vehicle] Act.

(2) A copy of the constitution, by-laws, rules and regulations of a proposed plan must be filed with the (Board or Superintendent) for approval.

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(3) On acceptance of the filing and approval by the (Board or Superintendent) under subsection (2), the plan is deemed to be a Government approved industry plan to ensure a market for automobile insurance to all owners of automobiles in this Atlantic Province and for operators of automobiles in [this Atlantic Province] who hold operators' licences issued under the [Motor Vehicle] Act.

(4) A copy of a proposed change to be made in the constitution, by-laws, rules or regulations of a plan or a notice of termination of a plan must be filed with the (Board or Superintendent) at least 15 days before the change or termination is proposed to be effective, and that change or termination must not take place unless approved by the (Board or Superintendent.)

(5) When an insurance agent receives an application and effects coverage under a plan by binding a risk, the agent is bound by the applicable terms and conditions of the plan in existence at that time for the duration of the coverage so placed.

(6) All rates charged for automobile insurance under a plan are subject to the approval of the Board, and, except for section ___, sections ___ apply, with all necessary modifications, to those rates.

(7) Nothing in this section relieves an insurer from ensuring that the provisions of this subpart relating to filing and the matters required by sections ____ are complied with.

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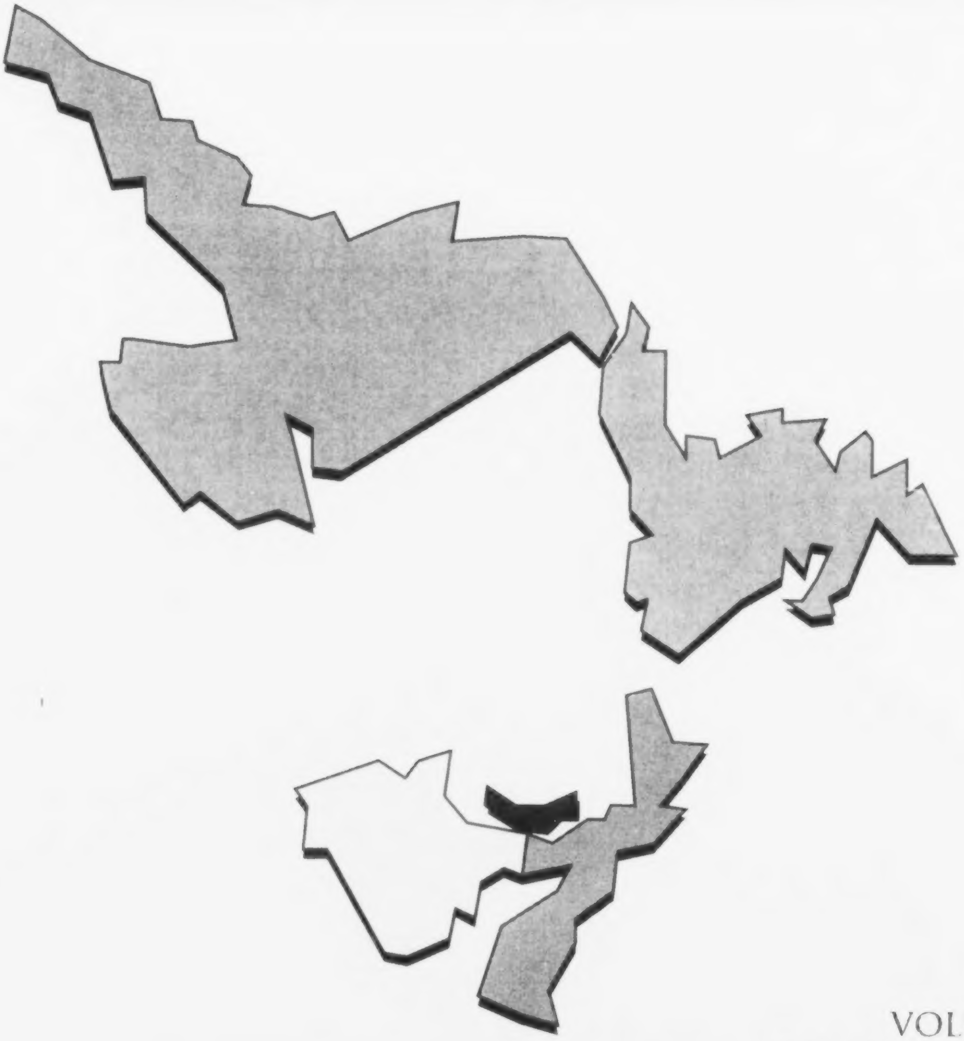
ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE



VOLUME 2:
CONSULTANTS' REPORTS

REPORT TO THE ATLANTIC PREMIERS

SEPTEMBER 30TH, 2003

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE

HARMONIZATION OPTION

TAB 1

SEPTEMBER 30TH, 2003

Common Themes in the Atlantic Region

In fulfilling its mandate under the terms of reference, the Task Force developed the attached matrices to assist the four provinces in determining the commonalities in the legislation, and in what areas there were departures from the norm. There are strong similarities within the region, particularly on the key issues.

All regions have attempted to address issues of affordability, accessibility, transparency and fairness. This reflects common values, and a belief that all consumers should have equal access to insurance services, that there be oversight of rates by an impartial board, and that there be access to insurance for those who are hard to insure. The Facility Association operates in all four provinces.

The supervision of insurance companies is very similar across the region. All provinces have a Superintendent; companies have to be licenced and use licenced agents, brokers and adjusters; companies are required to be covered by the Property, Auto and Casualty Insurance Program; and all must follow specific rules for sending notice of cancellation to consumers. Harmonizing the requirements for companies would reduce the cost for them as well as the paper burden associated with four different systems. There are strong similarities in the perspectives shared by the superintendents across the region, and a consultative approach that is often taken before making decisions on policy or practice, which reinforces a belief that a regional approach to governance would work.

At various times, one of the provinces has developed a different strategy to deal with a specific issue in their province, but these have generally not been totally new concepts but variations on a theme. For example, all have liability insurance at the $200,000 level, but Nova Scotia has announced that this would increase to $500,000. The issue is **not** the insurance coverage, but rather the appropriate amount. In NS, over 90% of consumers have coverage over this amount, and there were concerns that coverage should better reflect the reality of the risk and the cost associated with protecting oneself against those with less coverage.

There is a strong concordance in the insurance policies used across the four provinces, especially with respect to Sections A and D, which are the mandatory aspects of the policy, as well as with Section C, which is the consistent optional coverage in all provinces. This concordance is extended to Section B, varying only in the amount in NB, and by the fact that it is not mandatory in Newfoundland and Labrador.

In the chart, of the approximately 40 issues covered in the first matrix on legislation, approximately 85% are or will be harmonized in a common manner. Until key issues, (the differences that are outlined in the matrices, and noted below) are addressed, further harmonization cannot be achieved. The Provincial governments must provide further direction on the following issues:

1. The common regulator
2. individual Superintendents
3. provision of caps
4. risk rating factors
5. accident benefits
6. underwriting practices

In order to resolve these key issues, it is recommended that the Atlantic provinces establish a review panel to find solutions to improve harmonization on existing and future proposals and any future proposals impacting on a common regulatory framework for the Atlantic provinces.

Matrix of Common Insurance Legislation

Insurance Provisions Common to all Provinces	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" items
1. Auto issues					
1. Board to review insurance issues	[(will have an "all insurance" board, but focus is on auto rates)	[(Board only reviews rates)	[(Board only reviews rates – being changed to auto only)	[(Board only reviews rates)	[
2. Consumer Advocate (in place or can be appointed)	[(not in legislation)	None at present	[(short term appointment)	None at present	[
3. Facility Association in place in the province	[	[	[	[	[
4. Right to sue for non-economic pain and suffering will be soon limited for minor injuries in auto	[(have announced tort limitation)	[(has passed legislation)	[(has announced option)	[(has announced tort limitation)	[
5. Soft tissue cap on pain and suffering awards proposed at $2,500	[	[	0 cap	[	Differ
6. Right to sue for economic loss in excess of accident benefits	[	[	[If you have AB, choose to sue at fault party or collect AB; can't collect AB if you sue.	[	[
7. Mandatory no-fault section B benefits	[(Allowing some options to buy greater coverage)	[	No – it's optional	[	Differ
8. Medical Payments under	$25,000/person,	$50,000/person,	Yes, only	$25,000/person,	[

Insurance Provisions Common to all Provinces	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" items
Sec B OR (# years of limitation)	includes rehab, excludes health ins plan	includes rehab, excludes health ins plan (4 years)	applies if insurer provides coverage. Limits set in policy $25,000/person, includes rehab, excludes health ins plan	includes rehab, excludes health ins plan (4 years)	
9. Funeral Expenses	$1000	$2500	Same as #8, limits set in policy, $1000	$1000	[
10 Disability Income Benefits	104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	104 weeks partial; max. $250/week; housekeeper $100/week, max 52 weeks	Same as #8, $104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	[
11. Death Benefits	Death w/in 2 yrs $10,000 to head $1000 each to dependents; Spouse $10,000 Children $2,000	Death w/in 2 yrs $25,000 to head $1000 each to dependents; Spouse $25,000 Children $5,000	Same as #8 Death w/in 2 yrs $10,000 to head $2,000 each to dependents; Spouse $10,000 Children $2,000	Death w/in 2 yrs $10,000 to head $1000 each to dependents; Spouse $10,000 Children $2,000	[
12. Licence general agents, brokers	[	[(Do not licence agencies)	[	Licence individuals, not companies – prefer to match	[

Insurance Provisions Common to all Provinces	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" items
				others	
13. Current penalties range for discrimination	$200 per day to $50,000 per day	Fine from $250 to $5000 .and where convicted, loss of licence.	Planned for prohibited underwriting practices-1st offence is $25K; max is $250,000.	Fine up to $2,000 or imprisonment for a term of not more than one year or both	[

Insurance Provisions Common to all Provinces	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" items
2. Administration and General Provisions:					
14. Superintendent in place	[	[	[	[	[
15. Companies Licenced and pay fee	[	[	[	[	[
16.Powers of the Superintendent over licenced companies	[	[	[	[	[
17. Companies must use licenced agents and brokers	[	[	[	[	[
18. Companies must use licenced adjusters	[	[	[(this includes staff adjusters)	[	[
19. Membership required in insurance solvency plan (PACIP or COMCORP)	[	[	[	[	[
20. Prohibition of unfair or deceptive practices	[	[	[(Proposed-Auto Reform Proposals)	[	[
21. Insurance Premiums Tax in place	[(built in)	[	[(listed as a separate item)	[(built in)	Percentage varies per province
22. Notice of cancellation provisions to consumers (timelines)	[	[	[(Yes when insurer cancels; No if Fin Co cancels for insured.)	[	[

Other areas of commonality	**Nova Scotia**	**New Brunswick**	**Newfoundland & Labrador**	**Prince Edward Island**	**Possible "Atlantic" item**
Other areas of commonality					
23. Issue cards identifying whether insurance is through facility association	No	No	Planned	No	Differ
24. Provision for "grace period" for auto in legislation	No	No	For discussion – issue should be notification period	Offered by some companies but not in legislation	Differ
25. Variety of premium payment plans	[	[	[Insurer to offer monthly paymts. Consumer not required to accept and can finance.	[	[
26. Superintendent of insurance approves forms	[	[	[Planned – mandatory only	[	[
27. Affordability	[	[	[Proposed 30% reduction in Sec A	[	[
28. Accessibility	[	[	[Proposed regulation of underwriting guidelines	[	[
29. Transparency	[	[	[Disclosure requirements on brokers & agents	[	[

Other areas of commonality	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
30. Fairness	[	[	[Will eliminate age, sex & marital status	[	[
31. Section A (mandatory)	[	[	[	[	[
32. Section C (optional)	[	[	[	[	[
33. Section D (mandatory)	[	[	[		[
34. Private System	[	[	[	[	[
35. Tort System	[	[	[	[	[
36. SEF 44 family (optional)	Available AND optional	Available AND optional	Available AND optional	Available AND optional	[
37. SPF 1 (owners)	[	[	[	[	[
38. Minimum Liability	Moving from $200,000 to $500,000	$200,000	$200,000 or such higher amount set out in certificate	$200,000	[
39. SEF 20	[	[	[	[	[
40. Premium financing	Some offer this	[	[	[	[

Other areas of commonality	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
41. Notification of cancellation of policy (even if requested by insurer)	[Written, both parties	Not in legislation	[Written, both parties	[Written, both parties	[
42. Vehicle licensing link	No	No	No	No	[
43. Who pays for:					[
➢ Superintendent	General Revenue	General Revenue	Licence fees	Licence fees	[
➢ PUB/Insurance Board	Appropriation and recovery through industry assessment	Recovery of costs	Recovery of costs	Recovery of costs	[

Differ in about 5 areas; concordance about 88%.

Insurance Policy Provisions Common to all Provinces	**Nova Scotia**	**New Brunswick**	**Newfoundland & Labrador**	**Prince Edward Island**	**Possible "Atlantic" item**
1. Section A: Third Party Liability – mandatory?	Yes	Yes	Yes	Yes	[
a) Amount: as stated in Act (Minimum $200,000) or in the premium section, **not** in this section of policy	Yes ($500,000)	Yes	Yes	Yes	[
b) Coverage: covers insured and every other person, who with his consent, drives the auto	Yes	Yes	Yes	Yes	[
2. Section B: Accident Benefits (Mandatory?)	Yes	Yes	Not mandatory	Yes	Differ
ss. 1 (1)Medical Payments Stated in Policy	$25,000/person, includes rehab, excludes health ins plan (within 4 yrs from accident)	$50,000/person, includes rehab, excludes health ins plan (4 yrs)	$25,000/person, (or such higher amount set out in certificate); includes rehab, excludes health ins plan	$25,000/person, includes rehab, excludes health ins plan (4 yrs)	Differ
ss.1 (2) Funeral Benefits (to the amount stated in respect of the death of any one person)	$1000	$2500	$1000	$1000	[

	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
Ss 2 Part 1-Death Benefits (standard policy includes definitions for dependant which can include spouse, common law partner, parent or relative who lives full time with insured; or person under 18 who resides at home, is medically infirm, or fulltime at college.)	Death w/in 2yrs $10,000 to head $1000 each to dependents; Spouse $10,000 Children $2,000	Death w/in 2yrs $25,000 to head $1000 each to dependents; Spouse $25,000 Children $5,000	Death w/in 2yrs $10,000 to head $2000 each to dependents; Spouse $10,000 Children $2,000	Death w/in 2yrs $10,000 to head $1000 each to dependents; Spouse $10,000 Children $2,000	[
ss. 2 Part II Loss of Income (standard policy indicates person must be employed at the date of the accident and suffer from the inability to perform those duties; this inability may surface within 30 days of the accident)	104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	104 weeks partial; max. $250/week; housekeeper $100/week, max 52 weeks	104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	104 weeks partial; max. $140/wk; housekeeper $70/wk, max 12 weeks	[
Subsection 2A-Supplemental benefits respecting Accidents in Quebec	Yes (May not be a formal agreement)	No	No	No. Agreement has never been ratified	[
3. Section C- Loss of or Damage to Insured Automobile (Optional)	Yes	Yes	Yes	Yes	[
The insurer agrees to cover for direct and accidental loss for ss. 1-All perils ss. 2- Collision or upset	Yes	Yes	Yes	Yes	[

	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
ss.3 Comprehensive-for perils other than collision ss.4 Specified perils-caused by fire, lightning, wind, earthquake, rising water, etc	Yes	Yes	Yes	Yes	[
Deductible clause-each occurrence has a deductible unless a total loss occurs	Yes	Yes	Yes	Yes	[
Exclusions: include tires, rust, corrosion, wear and tear, freezing or explosion unless coincident with other loss or damage; fraudulent conversion; voluntary parting with the vehicle, radioactive materials, trailers, tapes and equipment; exclusion when driver is intoxicated or drugged; etc.	Yes	Yes	Yes (NL does not have all Criminal Code sections)	Yes	[
Additional agreement of insurer: Loss of use by theft: where covered, reimbursed from $25.00 per day, and not more than $750 for rental	Yes	Yes (No more than $25.00 per day, a total of $750 per day, 72 hrs after theft reported.)	Yes (No more than $30/day to a maximum of $900-starts 72 hours after theft reported	Yes	Differ
Section D- Uninsured and Unidentified Auto Coverage – Mandatory?	Yes	Yes	Yes	Yes	[
1. Definitions	Yes	Yes	Yes	Yes	[

	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
2. **(1)Coverage**: Insurer agrees to pay all sums resulting from an accident with an unidentified or uninsured motorist	Yes	Yes, Max $200,000	Yes. Max $200,000 property damage where driver id.and subject to $250 deduct.	Yes, up to max of $200,000.	[
(2) Qualification of Dependent Relative; definition	Yes	Yes	Yes	Yes	[
(3) Limits and Exclusions: Insurer is not required to pay if in excess of the minimum limit for auto accident under ss 125 (1) of the Insurance Act.	Yes	Yes	Yes	Yes	[
(4) Accidents involving unidentified Autos -accident reported w/in 24 hrs -claim delivered w/in 30 days -make the car available for inspection.	Yes	Yes	Unidentified autos: Add as soon as practical	Yes	[
(5) Determine legal liability, amount of damages -issues may be decided by Arbitration	Yes	Yes	Yes	Yes	[
General Provisions, Definitions and Exclusions					

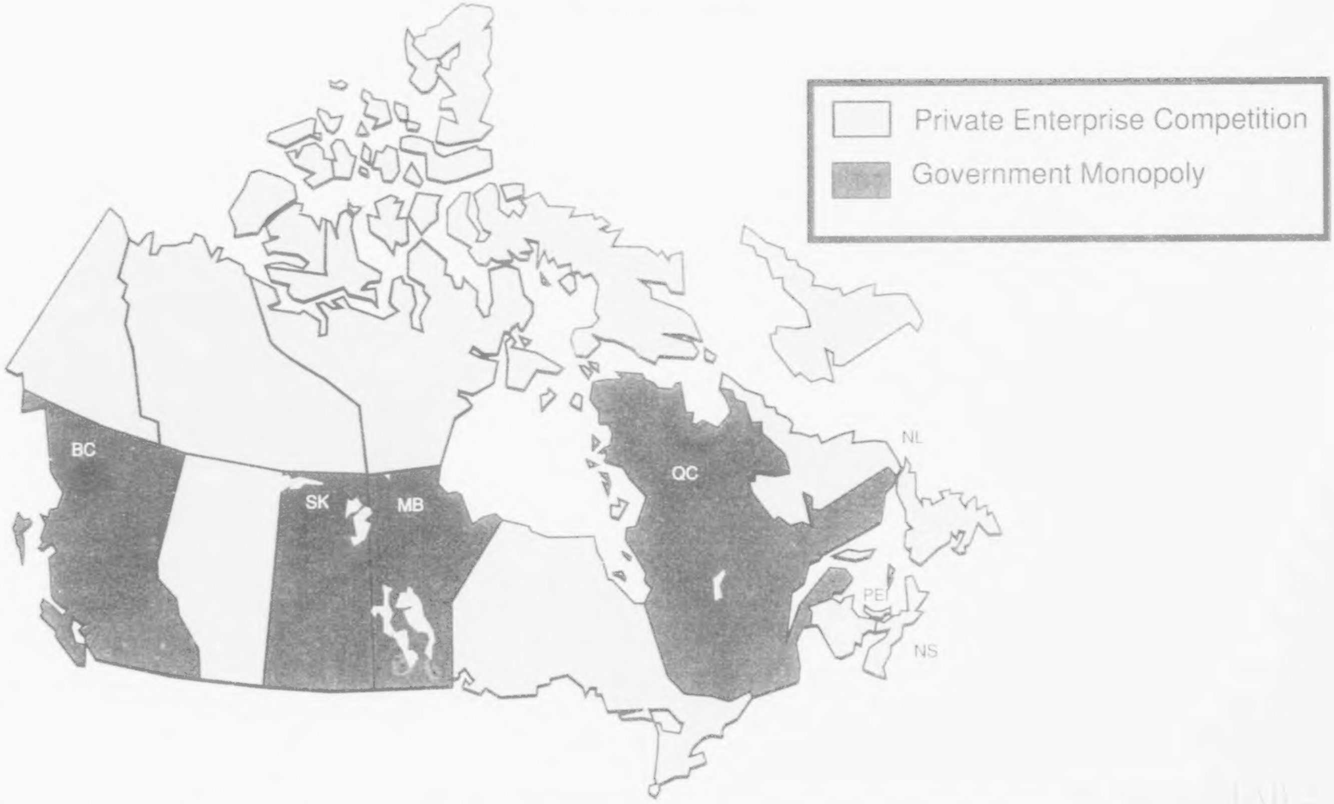
	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible “Atlantic” item
1. Territory : Canada, USA and vessel between the ports of these countries	Yes	Yes	Yes	Yes	[
2. Occupant is defined as a person driving, carried in or getting into or alighting from car	Yes	Yes	Yes	Yes	[
3. Consent of Insured is required for person to be driving and coverage paid	Yes	Yes	Yes	Yes	[
4. Garage personnel excluded	Yes	Yes	Yes	Yes	[
5. Auto defined to include rentals and cover other situations	Yes	Yes	Auto: described as new, temporary, substitute, etc	Yes	[
6. Two or more autos: each deemed to be insured under separate policy	Yes	Yes	Yes	Yes	[
7. War Risks excluded	Yes	Yes	Yes	Yes	[
8. Excluded uses: -business purposes -carrying explosives -taxi, etc	Yes	Yes	Yes, unless specified in an endorsement to policy	Yes	[
Statutory Conditions: Conditions 1, 8 and 9 apply to policy conditions in Section B					
1) Material **change in risk: notice** must be given if any change in the interest in the	Yes	Yes	Yes	Yes	[

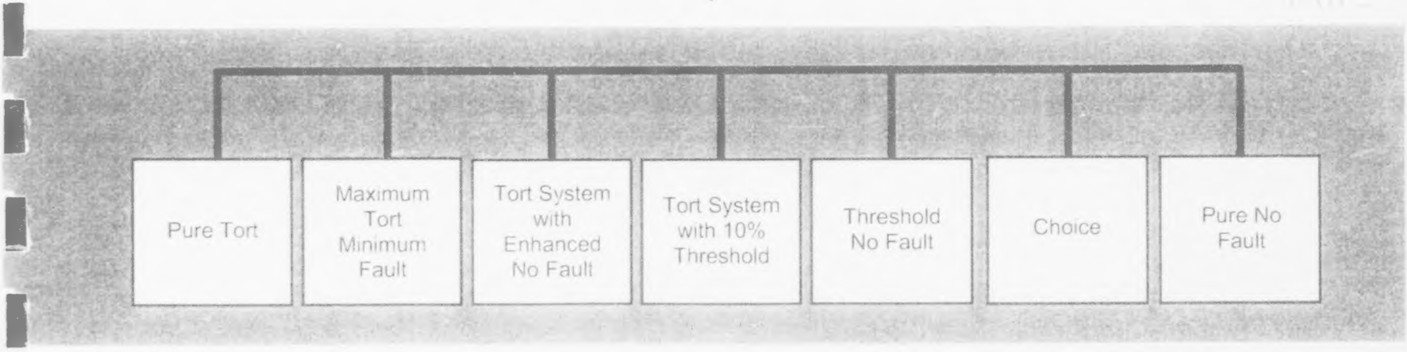
	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
car occurs, including sale.					
2) **Prohibited use by insured:** -must be qualified to operate -licence not suspended -cannot be used in race or for illicit trade or transport	Yes	Yes	Yes	Yes	[
3) Requirements when Loss occurs to Persons or Property -must give prompt written notice of accident -verify by declaration that it occurred during use -forward all letters, notices, to the insurer	Yes	Yes	Yes	Yes	[
4. Loss of auto -same as above, but no repairs done without the consent of the insurer	Yes	Yes	Yes	Yes	[
5. Inspection of Auto: insured must permit insurer to inspect	Yes	Yes	Yes	Yes	[
6. Time, Manner and Payment of Insurance Money (Insurer must pay within 60 days)	Yes	Yes	Yes	Yes	[
7. Who may give notice and proofs of claim?	Yes	Yes	Yes	Yes	[
8. Termination in writing with 15 days notice by registered mail or 5 days if	Yes	Yes	Yes	Yes	[

	Nova Scotia	New Brunswick	Newfoundland & Labrador	Prince Edward Island	Possible "Atlantic" item
served personally; -refund of excess premium -where terminated by insured, excess will be returned as soon as practicable (short rating allowed)					
9. Notice to insurer at chief agency in the Province by registered letter	Yes	Yes	Yes	Yes	[
Endorsements					
SEF 44: Family endorsement	Yes	Yes	Yes	Yes	[
SEF 20: Loss of Use Endorsement	Yes	Yes	Yes	Yes	[

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE

A REPORT ON ALTERNATIVE AUTOMOBILE INSURANCE COMPENSATION SCHEMES





Pure Tort

Maximum Tort Minimum Fault

Tort System with Enhanced No Fault

Tort System with 10% Threshold

Threshold No Fault

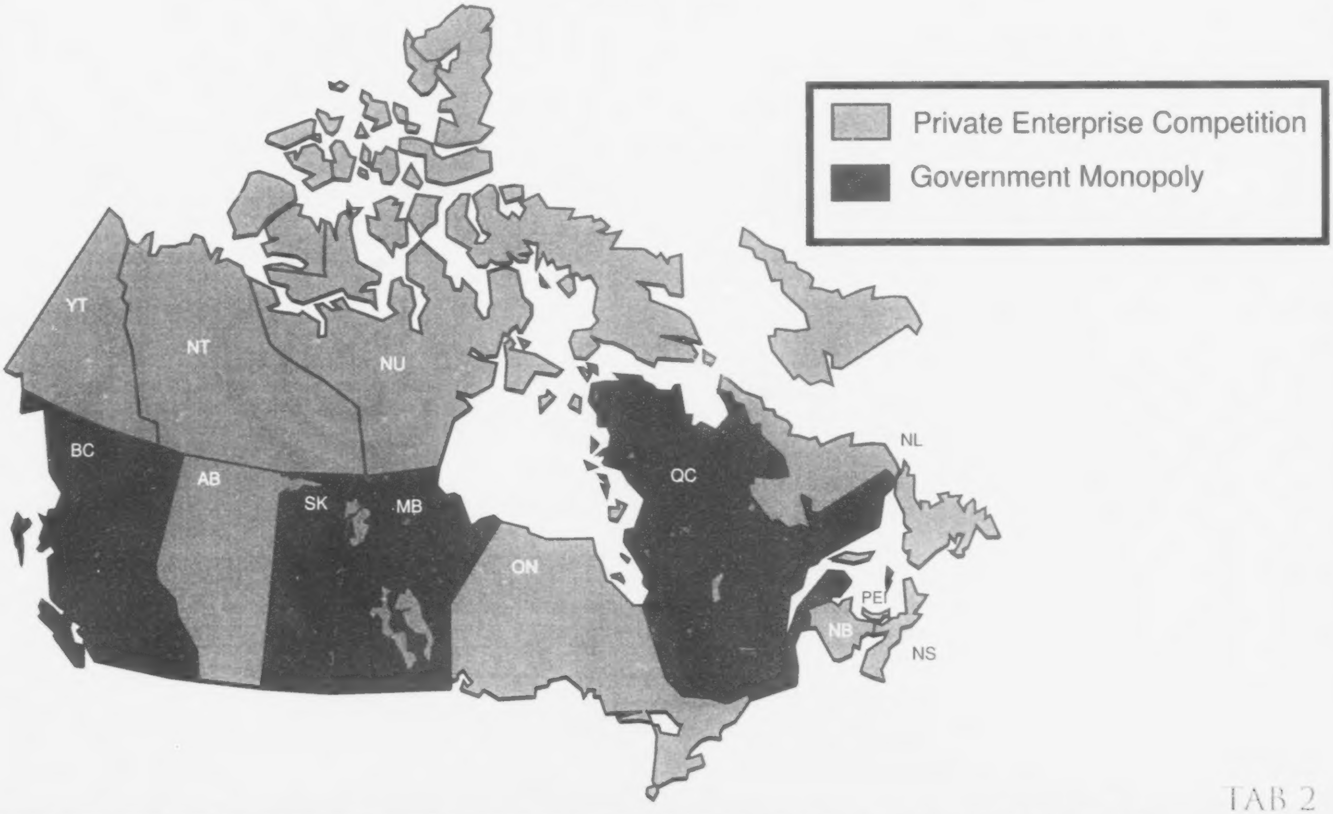
Choice

Pure No Fault

Shelley L. Miller Q.C.
Fraser Milner Casgrain LLP

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE

A REPORT ON ALTERNATIVE AUTOMOBILE INSURANCE COMPENSATION SCHEMES



TAB 2

Pure Tort | Maximum Tort Minimum Fault | Tort System with Enhanced No Fault | Tort System with 10% Threshold | Threshold No Fault | Choice | Pure No Fault

Shelley L. Miller Q.C.
Fraser Milner Casgrain LLP

Table of Contents

I. Executive summary 1
II. Background 14
PART ONE: PUBLIC SUPPLY OF AUTO INSURANCE 15
III. Components of a Public Auto Insurance System 15
    A. Who can supply the insurance product? 15
    B. What decides who will be the supplier? 15
    C. What is the product that is supplied? 17
    D. Who supplies the mandatory insurance product in Canada? 17
    E. Analysis of Private Delivery versus Public Delivery Models 18
        1. Royal Commission on Automobile Insurance in British Columbia 19
        2. Report of the Manitoba Automobile Insurance Committee - 1970 19
        3. Report of the Committee of Inquiry on Automobile Insurance Government of Québec 1974 21
        4. Report Of Inquiry into Motor Vehicle Accident Compensation in Ontario 1988. 23
        5. Alberta Automobile Insurance Board Report 1991 28
        6. KPMG Report 28
IV. Risk Rating, Regulation And Classification Systems Of Models In Canada 29
    A. Risk Rating 29
    B. Classification Systems 30
        1. British Columbia 30
        2. Saskatchewan 30
        3. Manitoba 30
        4. Québec 31
    C. Regulation 31
PART TWO: PRODUCT MODELS 35
V. A Review Of Alternative Compensation Models 35
    A. The Pure Tort Model 37
    B. The Maximum Tort Minimum No fault Model 37
    C. The Enhanced Add-on No Fault Model 40
    D. The New South Wales 10% Disability Threshold Model 42
    E. The Threshold No Fault Model 44
    F. The Choice Model 46
    G. The Pure No Fault Model 49
VI. Conclusions about Compensation Models 52
PART THREE: PUBLIC SUPPLIER MODELS 52
VII. The Australia Experience Of Public Models 52
    A. New South Wales 53
    B. Queensland 56
    C. Victoria 57
        1. Background 57
        2. Initial Reserves 58
        3. Start-Up Costs 58
        4. Technology 58

        5. Adjustment of service provider relationships during transition 59
        6. Purpose and Function 59
        7. Financial Dimensions and Service Delivery 59
        8. Staffing and Organizational Structure 59
        9. Product Model and Claims Data 59
VIII. Detailed Review of Public Models in Canada 61
    A. British Columbia 61
    B. Saskatchewan 65
    C. Manitoba 68
    D. Québec 74
        1. History 74
        2. The pure no fault model 78
    E. External Evaluations Of Public Models 79
        1. The KPMG Report 80
        2. Medical Investigative Studies of Claiming Behavior 85
PART FOUR: COSTING 85
IX. Analysis Of Costing Of Public Models In Canada 85
    A. Start Up Costs 86
    B. Property- Land and Building Costs: 90
    C. Initial Capital 91
    D. Operating Expenses 93
    E. Conclusion 94
X. Comparative Costing Of Alternative Product Scenarios For Atlantic Canada......94
    A. Description of Product Scenarios 94
    B. Summary of Findings in Exactor and KPMG Studies: 95
    C. Premium Savings Estimates 96

I. EXECUTIVE SUMMARY

This report responds to the request of the Atlantic Canada Insurance Harmonization Task Force for an examination of the different forms of automobile insurance systems, both public and private, a comparison of the costs and benefits of such systems and, to the extent possible at this stage, identification of the startup costs and effects on existing service providers of establishing such a system in Atlantic Canada. The material is presented in four stages:

(1) Examination of the components of public supplier models of automobile insurance delivery including discussion of risk rating, regulation methods and classification systems in Canada with particular attention to the public supplier provinces;

(2) Review of the alternative compulsory automobile insurance products or compensation models;

(3) Detailed examination of public supplier compensation models in operation in Canada and Australia; and

(4) Analysis of public supplier system costs.

PART ONE: PUBLIC SUPPLY OF AUTO INSURANCE

COMPONENTS OF A PUBLIC AUTO INSURANCE SYSTEM

Who supplies the automobile insurance product is a distinct question from what type of product is supplied. There is no conceptual relationship between no fault insurance and Government insurance. The term "public" insurance will be used in this interim report to denote a government monopoly supplier system, whether it provides a no fault product as in Québec or a maximum tort and enhanced no fault product as in British Columbia.

A. What decides who will be the supplier?

There have been transformations of the supplier of the automobile insurance product from private insurers to public insurance and vice versa. In Australia, there have been instances where private insurers have exited the market place after government mandated insurance rates that were reduced to unacceptably low levels. In Canada provincial governments have taken over the delivery of the compulsory automobile insurance product on the basis of political policy. The driving behavior of the motoring public, the claiming behavior of the traffic injured, and specific conditions arising within an automobile insurance scheme can also influence these kinds of transformations.

B. What is the product that is supplied?

Each province and territory has enacted legislation that requires some minimum amount of insurance to be placed on registered and licensed vehicles in case their owners or operators cause injury to another through the vehicle's use or operation. This minimum amount of insurance is referred to variously as compulsory or mandatory insurance, third party liability or basic insurance.

This report addresses issues respecting public and private automobile insurance models in the sale of mandatory insurance coverage. It does not intend to address in any detail issues relating to optional or excess coverages.

C. Who supplies the mandatory insurance product in Canada?

The mandatory insurance product in Ontario, Alberta, all the Atlantic provinces, and all the Territories, is delivered by private insurers. The mandatory insurance product is delivered in British Columbia, Saskatchewan, Manitoba and Québec by non profit Crown Corporations.

The first public plan in Canada was established by the provincial government in Saskatchewan in 1944 to be delivered by a public corporation: the Saskatchewan General Insurance Office. In 1946 automobile insurance was made compulsory and the Saskatchewan Government Insurance Corporation ("SGI") was given monopoly status. In Manitoba, the Manitoba Public Insurance Corporation ("MPI") was established as exclusive supplier in the province and commenced operations on November 1, 1971 to administer an automobile insurance plan known as Autopac. The Insurance Corporation of British Columbia, ("ICBC") was given authority in 1973 to engage in all classes of insurance. Private sector insurers are foreclosed from competing with these public plans on the mandatory insurance product. The Province of Québec instituted a monopoly automobile compensation plan in 1978 over the bodily injury portion, while the property damage coverages remained in the hands of private insurers. The plan was delivered by a government board, then known as the Régie de l'assurance automobile du Québec ("Régie") (now Société d' assurance automobile du Québec ("SAAQ")) which was virtually autonomous.

D. Public Delivery versus Private Delivery Models.

The question whether switching from a private scheme to a public scheme will, by itself, lower premiums has been studied at various times in several provinces with less than uniform results.

In British Columbia, the Wootton Report of 1968 concluded that private insurers should be given a last opportunity to market the basic and supplementary insurance and to make the competitive market work for the benefit of consumers.

In 1974 in Québec, the Gauvin Report recommended that the private delivery system be continued but with a package of reforms aimed at reducing premiums. The Gauvin Report identified the advantages of competition as including:

- greater efficiency;
- better administration;
- more adaptable to changing conditions

and the advantages of a government monopoly as including:

- integration of underwriting and marketing with vehicle registration and licensing;
- improved government commitment to road safety;
- co-ordination of benefits with other social programs.

The Osborne Report from Ontario in 1988 questioned whether Ontario taxpayers and drivers would benefit from a conversion to public insurance. It thought that the cost savings would be offset by the start up costs in the short run and would be eroded in the long run by other cost based considerations, particularly elimination of the potential for lower premiums derived from competition. The Osborne Report saw the main advantage of a public plan as its potential for premium savings through:

- lower business acquisition costs;
- lower operating costs;
- integration of insurance with registration and licensing requirements

but concluded that these were balanced by the long term advantages of private supply, including:

- lower premiums through competition;
- freedom of choice;
- fairness and cost internalization through the private system of classification and experience rating

A study in the state of Queensland in 1999 indicated that a state monopoly would deliver an average premium of $262 which was $36 lower than the then existing private supplier model. This calculation of savings was attributed to lower policy and business acquisition costs. However it warned that the reduced premiums would come at a cost of assumption of the scheme operating risk and other risks by the state and it recommended against such a change.

The Queensland study listed the advantages of government monopolies as including:

- greater capacity to smooth premium adjustments;
- consistency of claims management;
- lower business acquisition costs;
- closer attention to long term care and scheme policy issues;
- removal of database duplication and provision of consistency in data quality;
- control of provider fees;

- premium savings which may be sustainable over time,

and the disadvantages of government monopolies as including:

- greater government involvement in premium setting which may have consequences for funding;
- scheme funding and operational risks moved to Government;
- direct operational impact of loss of revenue and profitability of insurers;
- the need to meet government return criteria;
- denial of the positive advantages of the existing competition model;
- benefits of a reduced premium may be eroded over time due to lack of competition.

The transformation to a public monopoly delivery model can produce a modicum of savings to a compulsory automobile insurance system initially. However there are medium and long term considerations which may override the short term gain. The exhaustive studies of the question in Québec, Ontario and British Columbia were consistent in concluding that the evidence did not support a move to a public monopoly model.

RATEMAKING, REGULATION AND CLASSIFICATION SYSTEMS IN CANADA

A. Ratemaking

Ratemaking is the process of experience or precision risk rating to establish the levels of premium to be charged to policyholders. In private enterprise models, the philosophy has traditionally held that the premium should relate to the risk by reference to sound actuarial, statistical insurance underwriting principles. The studies in Ontario, Alberta and Manitoba expressed support for this methodology. It is considered that the more effectively these principles are applied to the practice of risk rating, the more correctly risks are allocated among drivers which reduces the tendency of cross subsidization.

If age and gender are prohibited as rating variables on social policies grounds, then low risk drivers subsidize high risk drivers. This cross subsidization has long term negative effects such as increasing the risk of accidents to all road users which results in additional medical, social and financial costs. Unfortunately there are no surrogate rating factors that can be introduced to avoid both unfair discrimination and cross subsidization. There is likely no resolution to this vexing problem that will satisfy all members of society. Whatever view is adopted by a jurisdiction, it will result in certain unavoidable social costs to some segment of the motoring public.

B. Classification Systems

The ICBC Auto Plan currently uses six rating variables in its classification system, including:

- the purpose for which the vehicle is used (e.g. pleasure, drive to work);
- the territory where it is primarily located when not in use;
- the make, model, risk, age and original value of the vehicle;
- the costs of prior years' claims under each rate class; and what coverage is chosen.

SGI charges a standard premium for third party liability and no fault accident benefit coverage as well as a premium to cover all perils damage to the insured's vehicle which varies in accordance with the value of the vehicle. Surcharges are levied based on the individual's at-fault accident history and driving record over the previous three years. Territory is ignored as a rating factor.

Before 1986, Manitoba eliminated age, gender and marital status as rating variables. Premiums have since been based on the type and principle use of the vehicle with surcharges levied in accordance with a schedule of demerit points. The Kopstein Report recommended a statistically sound and actuarially determined rate making system.

All insured motorists in Québec pay the same premium for compulsory coverage provided by SAAQ.

The reforms under the 1999 New South Wales model provided that the existing system of community premium rating was retained but would now allow use of rating factors of age, gender, driving record, type, age, and engine size and safety features of the vehicle.

C. Regulation

The most common models of rate regulation used in Canada have been market competition, file and use and prior approval. Under the first, the regulatory agency monitors rates to identify the markets where market competition is not producing rates approximating those which would occur in a perfectly competitive industry. In such instance the agency would intervene, but otherwise adopt a *laisser faire* stance.

The file and use model contemplates that the insurer will put proposed rate changes into effect only upon filing or after a specified waiting period after filing. The filing would include proposed rates, evidence on losses, expenses and underwriting profits or losses. The regulator would have the authority to challenge a rate submission and conduct hearings or to resolve the dispute by compromise. This model was implemented by Nova Scotia in 1960.

The prior approval model requires filing and regulatory approval of rates before use. The regulator might hold a hearing to consider the insurer's rate submission. This system has been in use in Alberta since 1970, New Brunswick since 1975, and in Newfoundland and Labrador since 1977. The jurisdiction of the Alberta board is limited to the compulsory insurance only by statute, whereas in Newfoundland and Labrador and New Brunswick the regulator has had jurisdiction over the whole policy.

The Osborne Report endorsed regulatory supervision of automobile insurance premiums but not premiums setting. It gave a number of reasons which included the following:

- the dominant objectives of rate regulation should be premium fairness and market stability with premium fairness being the most important;
- premium fairness would not be achieved if the regulatory scheme were unnecessarily costly or worked to inhibit competition among insurers;
- the model should not inhibit insurers from being innovative in their rating procedures as this could be beneficial to consumers; and
- benchmark rates would deny the motoring public the benefits of true competition.

PART TWO: PRODUCT MODELS

A REVIEW OF ALTERNATIVE COMPENSATION MODELS

Description of the type of automobile insurance product that is supplied includes questions of who is entitled to claim compensation, how and for how much. There is a spectrum of possibilities ranging from pure tort to pure no fault.

A pure no fault system as in Québec and Manitoba eliminates the proof of fault as a condition of entitlement to compensation. A pure tort system as in Newfoundland and Labrador requires that all traffic injured prove fault of another before they can receive any benefits or compensation.

Alberta has a system that is mostly tort, but has some modest no fault accident benefits. British Columbia has a mostly tort system as well but has much more generous no fault accident benefits than in Alberta. Ontario also has a system with enhanced no fault benefits but tort compensation has been restricted in what is called a "threshold system". Saskatchewan has recently adopted a model which gives consumers the choice between a tort policy and a no fault policy.

It is difficult to provide useful comparisons among differing compensation models because there is disagreement as to the goals each type is expected to serve and how well those goals are served in practice. This report contains a detailed review of evaluations of varying models based on the following five criteria: deterrence, adequacy of coverage to traffic injured, cost internalization, operational efficiency and premium costs and on a scale of 1 to 5, with 1 being the highest rank.

In a study prepared for the Alberta Automobile Insurance Board (AAIB) in 1991, Professors Trebilcock and Chapman ranked five compensation models including the existing Alberta maximum tort minimum no fault model according to the five criteria mentioned above. Their conclusions are represented in the chart below:

Composite Evaluation of Options

	MAXIMUM TORT	ADD-ON	THRESHOLD	CHOICE	PURE NO-FAULT
Deterrence	1	2	3	4	5
Compensation (Coverage)	5	1	2	4	3
Compensation (Internalization)	1	2	3	4	5
Operational Efficiency	5	4	2	3	1
Premium Costs	4	5	2	3	1
TOTAL	16 (3.2)	14 (2.8)	12 (2.4)	15 (3.0)	19 (3.6)

PART THREE: PUBLIC SUPPLIER MODELS

REVIEW OF PUBLIC MODELS IN AUSTRALIA

A. New South Wales

The government of New South Wales became the monopoly supplier of the basic automobile insurance product in 1984 after private insurers withdrew from the market claiming that regulated premiums had become unacceptably low due to increases in bodily injury loss costs. The product model was pure tort. A number of tort reforms were introduced including replacement of tort proceedings with a statute based administrative scheme to determine compensation. Costs continued to rise however and in 1988 New South Wales returned to a private supplier model. Threshold and deductible tort reforms were also introduced. Claims costs continued to rise and in 1999 a negotiated reform resulted in a new model with the following features:

- rating factors of age and gender permitted;
- ten percent permanent impairment threshold for tort claims;
- administrative processes to determine loss of work capacity and economic losses;
- focus on early medical treatment and rehabilitation with standardized treatment protocols.

The 1999 New South Wales experiment may prove that motorists and traffic injured themselves are notionally prepared to compromise the compensation principal in tort in exchange for more control over their recovery and rehabilitation destiny, a greater choice of effective rehabilitation strategies, and a reduction of time and cost expense in attaining the same.

B. Queensland

Queensland had a history of numerous participants in a private supplier system of basic automobile insurance until the early 1970's when virtually all private suppliers withdrew from the market due to unprofitability at regulated premium levels. From then until 1988 the supply scheme was a duopoly consisting of one private insurer and the state government insurance office ("SGIO"). SGIO sold its interest to another private insurer in 1988. There are currently six private suppliers in the market. Despite rising costs and the repercussions of a major insurer insolvency, the Queensland government has been reluctant to re-enter the market place. The basic insurance product followed the pure tort model.

C. Victoria

The government of Victoria became the monopoly supplier for basic automobile insurance in the mid 1970's when private suppliers withdrew from the market. It has remained so every since. No fault benefits were added to the tort component of the basic product in 1974. In 1986 tort recovery was restricted by a combination of descriptive and monetary thresholds to three classes of claimants: dependants of those fatally injured, those suffering permanent impairment of 30% or greater and those suffering certain other serious injuries as defined in the statute.

REVIEW OF PUBLIC MODELS IN CANADA

A. British Columbia

ICBC began as the monopoly government supplier of a maximum tort minimum no fault product in 1974. Major enhancements to the no fault benefits were introduced in 1982. This basic scheme has continued since.

ICBC markets through the private broker force. It also competes with private insurers on optional coverages. Registration and licensing are integrated through the broker network.

Premium rating employs a bonus/malus system using factors such as the type use and location of the vehicle, prior claims, and driving and at fault accident demerits. Age and gender are not permissible rating factors.

B. Saskatchewan

SGI has been the government monopoly supplier in Saskatchewan since 1948. Until 1995 the product was modelled on maximum tort and minimum no fault. By 1994 the plan had accumulated a deficit exceeding $1,000,000 and the government abolished the tort component with one exception for economic losses of high income earners and replaced it with an enhanced pure no fault plan.

Premium rating under the no fault plan was based on vehicle characteristics and claims history with surcharges for driving demerits and at fault accidents.

In 1995 SGI employed 380 brokers.

In 2003 Saskatchewan introduced a choice/no fault plan.

C. Manitoba

Manitoba's public insurance has been the monopoly government supplier since 1971. The basic insurance followed a maximum tort minimum no fault model. From 1980 to 1993 pure premiums increased annually at the rate of 16% and in 1994 Manitoba abolished the tort system and replaced it with a pure no fault model.

Premium rating is based on vehicle characteristics, location and driving record with driver demerits and at fault accidents attracting ser charges. Premiums decreased after the introduction of pure no fault by about 34% in the first two years.

D. External Evaluations Of Public Models

There has been no comprehensive and independent comparison of the public models in British Columbia, Saskatchewan, Manitoba and Québec. Only three evaluations of the public models in Canada have been located. One, the Kopstein Report of 1988 in Manitoba, likely led to the conversion in Manitoba from a maximum tort minimum no fault compensation model to the pure no fault compensation model.

The Addie Study, an actuarial analysis only, reported that the Manitoba and Saskatchewan plans showed considerable savings over privately run systems and concluded that public schemes have enjoyed public support even when socialist governments were replaced by more business friendly governments partly because of concern over lost start-up costs and loss of positions in the civil service, and partly due to expense savings in rural areas. She found the cost savings for larger more urbanized provinces had not been demonstrated up to 1991.

A KPMG Report, based on a study undertaken of the British Columbia system in 1996, found that ICBC costs were close to twice those of MPI and SGI and had increased at higher than the rate of inflation between 1986 and 1996.

The report concluded that increased costs appeared to be due to a number of factors including:

- Increasing propensity and ability to maximize awards especially non economic losses;
- Growing sense of entitlement to receive motor vehicle payments;
- Growing inclination to focus on pain and suffering;
- Increased advertising by lawyers and tendency to seek legal representation;
- Willingness of courts to increase types and amounts of compensation awards;
- Increased incidence of fraud.

The KPMG Report concluded that successful cost reduction required product reform but cautioned that product reform by itself could provide only a short term control of rising costs and that there had to be a shift away from litigation processes to more efficient expeditious and less costly dispute resolution with a focus on assured injury benefits, better health outcomes and improved driving behaviour.

The KPMG Report identified a number of lessons that it said could be learned from the experience of other jurisdictions including the following:

- maintaining the status quo for compensation models like that in British Columbia was not feasible;
- a strong descriptive threshold was necessary to control tort recovery costs along with emphasis on early and effective rehabilitation and traffic safety initiatives;
- government imposed rate freezes helped to get the attention of stakeholders to the issues of rising costs but were not a solution;
- the failures of threshold tort/no fault systems were usually due to a tort threshold that did not adequately restrict the right to sue or lack of balance between the tort threshold and the no fault benefits for wage loss or medical care;
- no fault enhancement invariably raises costs and premiums in bodily injury coverage especially in tort models;
- no fault models must have strong administrative controls on personal injury benefits and emphasize early effective rehabilitation;
- traffic safety initiatives were most effective and cost effective when pursued on a large scale.

The British Columbia government declined to implement the recommendations of the KPMG Report. It has been reported that pressure from lawyers and injured persons lobby groups was a factor.

The KPMG Report related primarily to the evaluation of the tort/enhanced no fault model in that province. What remains problematic is attempting to compare Canadian models with each other. Pure no fault models have lower premium rates charged to their motorists because they provide reduced benefits to their traffic injured. This trade off cannot be avoided but must be squarely addressed by the true stakeholders in the scheme, that is the public which, as motorists, pay for the scheme and, as potential traffic injured, may claim its benefits.

COMPARATIVE COSTING OF ALTERNATIVE PRODUCT SCENARIOS FOR ATLANTIC CANADA

The Task Force gave close analysis to the circumstances leading to the creation of Crown corporations in British Columbia, Saskatchewan, Manitoba and Québec, and the actual reported information as to the start up costs, transition issues and costs with a view to determining what specific cost savings could be attainable by converting the existing private enterprise delivery schemes in each of the Atlantic provinces to IBC as well as the careful and extensive considerations of the Ontario study, the Alberta and Queensland studies. It noted the difficulties in attempting cost comparisons of this type specifically referred in the 1996 KPMG study by reason that the information from the public models in Canada are not in the public domain. Ultimately, it found such an exercise would be difficult and inexact at best and possibly unhelpful or misleading at worst. It concluded that under the timeline and information constraints, it could do no more than provide some general projections. With that qualifier, the following product/supplier alternatives were considered:

- Scenario 1
  - the product - tort rights limited to a cap of $2,500, not indexed for inflation, for all claims below a verbal threshold of serious and permanent injury

    -no fault benefits as per the existing legislated minimum requirements
  - the supplier - private enterprise
- Scenario 2
  - the product – as in Scenario 1
  - the supplier – a public monopoly
- Scenario 3
  - the product – tort rights eliminated for all claims below the verbal threshold of serious and permanent injury

    - no fault benefits not included in basic insurance (but available as an extra priced option)
  - the supplier – private enterprise
- Scenario 4
  - the product – as in Scenario 3
  - the supplier – a public monopoly

Using an average of the findings contained in the Exactor and the KPMG studies in New Brunswick and extrapolating those findings to the whole of Atlantic Canada the following rough preliminary estimates of potential premium savings were generated bearing in mind that the nature of the data available from other public systems for comparison make this a difficult and inexact exercise. Subject to that qualification the Task Force concluded that the premium saving to be achieved by a conversion to a public scheme, similar to the savings in expense and profit margins experienced in the other public schemes, would be possible and would amount to about 10% of the premium as illustrated as a preliminary assessment in Table 1.

TABLE 1

Per $100 premium	Current Base	Scenario			
		1	2	3	3B
Relative Cost	$100	$82.00	$73.00	$79.00	$70.00
Supplier		Private	Government	Private	Government

PART FOUR: COSTING

ANALYSIS OF COSTING OF PUBLIC MODELS IN CANADA

A. Start-up Costs

Subject to reservations about the quality of available data, it appears the Canadian public models reported start-up costs as follows:

Plan	Date	Costs
British Columbia	1974	$12.5 million
Saskatchewan	1945	$12,000
Manitoba	1971	$3.1 million
Québec	1978	$6.8 million

Using a simple 5% per year inflation rate, the British Columbia start-up costs might be said to represent $54 million in 2003 dollars.

IBC has recently estimated start-up costs for a public plan in each of the Atlantic Provinces ranging from $12.3 million in Prince Edward Island to $88 million in New Brunswick.

B. Land and Building Costs

The following are not included in the start-up figures above:

Plan	Date	Land and Building Costs	Net Book Value
British Columbia	2002	$167 million	$69 million
Saskatchewan	2002	$51.6 million	$38 million
Manitoba		Unclear	
Québec		unclear	

C. Initial Capital

Plan	Date	Premium Base	Retained Earnings and/or Reserve
British Columbia	2002	$2.7 billion	$314 million
Saskatchewan	2002	$486 million	$2.8 million
Manitoba	2002	$160 million	$156 million
Québec		unclear	

D. Operating Expenses

Operating Expenses consist of business acquisition costs, premium taxes and general expenses (underwriting and overhead). In 2002 ICBC and SGI reported operating expense ratios of 15.4% and 15.8% respectively. Data compiled by IBC for 2001 indicated an average expense ratio in the private sector of 24%. Most of the difference is due to business acquisition costs. ICBC and SGI do pay premium taxes.

E. Conclusion

As to the issue of start up costs, it was not possible to undertake a thorough evaluation of this question. The Task Force did review some current cost projections prepared by the Insurance Bureau of Canada for the individual Atlantic Provinces in August, 2003 and sought some objective actuarial analysis of those projections. Some information was received from the public models in Canada as to their initial start up costs, but it was not sufficiently detailed or current for our purposes. With the previous qualifications, the Task Force considers a reasonable range for possible start up expenses to span from $54 million to $88 million, with possible additional funds for assets such as land and buildings, and initial contingency capital.

II. BACKGROUND

This interim report was prepared for the Atlantic Canada Insurance Harmonization Task Force, ("the Task Force") which was established by the Council of Atlantic Premiers meeting in Charlottetown, Prince Edward Island, on June 18, 2003, *inter alia,* to conduct and complete a comprehensive study of the full costs, benefits and legal implications of establishing an Atlantic public automobile insurance system.

The Task Force instructed the author of this report to address the following topics:

- An examination of the different forms of public automobile insurance systems,
- An examination of the costs and benefits (or drawbacks) of establishing an Atlantic Canada public automobile insurance system, and
- An examination of other implications of such a system.

As regards Topic 1, the Task Force requested:

- An examination of the different forms of public automobile insurance systems;
- A comparison of the benefits, the coverages, the methods of assessing risk and setting rates or premiums, the methods of delivery of insurance to consumers, the associated costs of registration, the cost of licensing, and the administrative structures required to manage each public automobile insurance system;
- As far as possible, to identify the startup costs of establishing the public automobile insurance system, including infrastructure, accommodation, technology and communications;
- As far as possible, to determine the effects on the various service providers in the existing automobile insurance compensation delivery system.

This interim report focuses on the examination and comparison of different forms of public automotive insurance systems and the identification of cost issues to enable a cost benefit analysis to be done. It does not purport to contain an exhaustive analysis of the merits and deficiencies of each different form of public automobile insurance system. Premium stability, for example, is only one element of such a system. If substantive changes are implemented to control cost features of a system, those changes will affect the compensation and benefit features. An evaluation of the most appropriate compensation and benefit features requires consideration not only of economic facts and assumptions but also political, social and legal issues. A full consideration of all such issues is beyond the scope of this report. Instead this report contains a factual summary of the relevant characteristics of alternative automobile insurance compensation models in operation in Canada and Australia and describes the various components that could be selected to achieve an alternate model of public automobile insurance for persons residing in the Atlantic provinces of Canada. The sources used for this report include studies conducted in

British Columbia[1], Québec[2], Ontario[3], Manitoba[4], Alberta[5], New South Wales[6], Queensland[7], as well as officials associated with Canadian provincial schemes operated by not for profit Crown corporations[8]. During preparation of this report, the Task Force took notice of reports from IBC, Consumers Association of Canada Review of Automobile Rates September, 2003, the Fraser Institute and submissions from other service providers.

PART ONE: PUBLIC SUPPLY OF AUTO INSURANCE

III. COMPONENTS OF A PUBLIC AUTO INSURANCE SYSTEM

The first step in a description of an automobile accident insurance compensation system is to separate the first question of **who supplies** the product from the second question of **who is entitled** to receive benefits from the supplier which in turn must be separated from the question of **what are the benefits** provided by the system. This report will begin with a description of the various types of supplier models. The choice as to who supplies the product does not depend on what type of product is supplied. Accordingly, questions which concern who is entitled to claim and for how much relate to the kind of product the system provides. These questions will be addressed below in turn.

A. Who can supply the insurance product?

The first concept which must be clarified is the term "**public**" automobile insurance system since this term is used in many different ways in discussions with the consumer, the media, politicians, stakeholders and service providers. In 1988 the Osborne Report said[9]:

> ***"There is no conceptual relationship between no fault insurance and Government insurance. That point must be emphasized because it has become increasingly obvious to me that no fault insurance is equated with government insurance, and government insurance with no fault insurance."***

In 2003, auto insurance may be provided by a government[10], or by a self-supporting non-profit crown corporation[11] or it may be operated or regulated in part by government and part by a private enterprise insurer[12] and in each case be described by some commentators as a public scheme. What is normally considered the opposite of a "public" scheme is an automobile insurance system that has as its suppliers insurance companies who operate according to private enterprise competition market principles and is referred to as a private enterprise model. However there does exist an example of a sole monopoly private enterprise supplier of automobile insurance[13]. In this interim report the term "public" insurance is used to denote a government monopoly supplier system. **Graph 1** depicts the areas in Canada where automobile insurance is delivered by a public supplier and those where it is delivered by private enterprise.

B. What decides who will be the supplier?

Is it the driving behavior of the motoring public, the prevailing government, the economic conditions of the market place, the claiming behavior of the traffic injured, or a combination of certain specific conditions arising within an automobile insurance scheme that decides who will supply the mandatory insurance product? It may be all of the above. There have been transformations of supplier from private insurers to government and vice versa as the following examples illustrate.

In the Australian state of New South Wales from 1942 to 1983, private insurers underwrote the policies while Government set the premiums. By the early 1980s, the Government provided insurance for all but 3% of vehicles. It continued as the supplier until 1988 when it replaced the government monopoly with a private enterprise supply model[14].

The Australian state of Queensland had a history of a private enterprise delivery until the late 1960s when insurers withdrew from the scheme after it became unprofitable. From then until 1992, the scheme was operated as a duopoly with one private sector underwriter and the Government supplier. At that time, other competitors were permitted to enter the market. At present, there are seven licensed insurers[15].

Before the creation of the government monopoly supplier models in British Columbia, Saskatchewan, Manitoba and Québec, the product was offered in those provinces by private insurers. The decisions of provincial governments in those provinces to take over the automobile insurance business were in response to significant public discontent over increasing premium levels. There was no compensation to private insurers for the loss of their business[16].

In British Columbia in 1966, The Royal Commission on Automobile Insurance conducted an exhaustive inquiry into all aspects of the automobile insurance delivery system in British Columbia. It recommended the private insurance delivery system be maintained but the tort compensation aspect ultimately be abolished[17].

In Québec in 1973, the Committee of Inquiry on Automobile Insurance reported on a number of problems with the then fault based regime, and, while its compensation-related recommendations were accepted, its recommendation in favor of private sector delivery was not[18].

In 1986, the Ontario Task Force on Insurance stated without elaboration that the delivery of the compensation system in Ontario should remain primarily in the hands of the private insurance industry – at least so long as private insurance could demonstrate that it has financial capacity to design and administer such a scheme at affordable premium levels[19].

In 1988, the Osborne Report recommended against a public monopoly automobile delivery system in Ontario for the following reasons[20]:

- Ontario taxpayers and drivers would not benefit from the conversion.
- The modest potential for cost savings particularly in the areas of business acquisition costs would be offset in the short run by the substantial start-up costs of a public plan and would be completely eroded in the longer term by other cost based considerations particularly the elimination of the potential for lower premiums derived from competition.
- There were no compelling social benefits or other non-economic justifications.

- His assessment of factors such as elimination of freedom of choice and substantial employment dislocation reinforced the case against public monopoly.

C. What is the product that is supplied?

In Canada everyone agrees that it is important for some monetary compensation to be available to persons who are injured in traffic accidents in Canada. For that reason, each province and territory has enacted legislation that requires some minimum amount of insurance to be placed on registered and licensed vehicles in case their owners or operators cause injury to another through the vehicle's use or operation. This minimum amount of insurance is referred to variously as compulsory or mandatory insurance, third party liability or basic insurance. Most vehicle owners voluntarily purchase even more insurance to cover the risk of causing injury to other persons, or of sustaining damage or loss to the vehicle or its contents. These kinds of insurance are often referred to as optional, or excess insurance coverages. Provincial and territorial governments use their statutory authority to legislate and regulate practices over the delivery of the mandatory insurance because consumers cannot legally choose to drive without it.

There is another component to the product usually described as accident benefits. The provision of accident benefits coverage is also compulsory in all jurisdictions in Canada except Newfoundland and Labrador. Accident benefits concern the compensation made available to the policyholder and insured persons by the insurer who supplied the policy. This component will be discussed in greater detail below.

This report addresses issues respecting public and private automobile insurance models in the sale of mandatory insurance coverage. It does not intend to address any issues relating to optional or excess coverages except the optional accident benefits coverage in Newfoundland and Labrador.

D. Who supplies the mandatory insurance product in Canada?

1. Private enterprise suppliers

The mandatory insurance product in Ontario, Alberta, all the Atlantic provinces, and all the Territories, is delivered by private insurers. The numbers of licensed insurers in those areas range from 36 in Nunavut to 81 in Ontario as can be seen from **Graph 2**. **Graph** 3 shows the population, number and location of insured vehicles in the provinces and territories.

2. Crown Corporations

The mandatory insurance product is delivered in British Columbia, Saskatchewan, Manitoba and Québec by non profit Crown Corporations. While these sole suppliers are sometimes described in the community as "owned by the policyholders" or "driver owned", the corporations are created by the enactment of a provincial statute and are regulated by government or an "arms length" regulatory body. It was noted by the Osborne Report that these plans are not identical, with the British Columbia corporation operating more like a private insurer and the Saskatchewan corporation carrying on business in a manner incompatible with a private sector company. Crown Corporations do not typically pay corporate income tax, however MPI is an exception. Until 1987 the British Columbia corporation did not pay any premium tax.

It has been suggested but not substantiated that public plans may not have to pay market rates for civil services or the use of public buildings. These factors make the comparison between public and private delivery systems more difficult[21]. With the foregoing in mind, these Canadian models will be referred to in this report as "public plans" or "public models".

The first public plan in Canada was established by the provincial government in Saskatchewan in 1944 to be delivered by a public corporation: the Saskatchewan General Insurance Office. In 1946 automobile insurance was made compulsory and the Saskatchewan Government Insurance Corporation ("SGI") was given monopoly status.

In Manitoba a report from the Manitoba Automobile Insurance Committee established in 1969 recommended a compulsory system of automobile insurance for all Manitoba residents to be administered by a crown corporation. The Manitoba Public Insurance Corporation ("MPI") was established as exclusive supplier in the province and commenced operations on November 1, 1971 to administer an automobile insurance plan known as Autopac. In 1974 it was given legislative authority to operate in other fields of insurance and since July 1975 has competed with the private sector in its general insurance division.

The Insurance Corporation of British Columbia, ("ICBC") was given authority in 1973 to engage in all classes of insurance. On March 1, 1974, it became the monopoly supplier of a complete auto insurance program known as Autoplan. Its general insurance division was sold to the private sector in February 1985.

Private sector insurers are foreclosed from competing with these public plans on the mandatory insurance product.

The Province of Québec instituted a monopoly automobile compensation plan in 1978 over the bodily injury portion while the property damage coverages remained in the hands of private insurers. The plan was delivered by a government board, then known as the Régie de l'assurance automobile du Québec ("Régie") (now Société d' assurance automobile du Québec ("SAAQ")) which was virtually autonomous[22].

Putting aside the separate question of what product or what type of compensation plan should be implemented, it seems fair to say that each of these not-for-profit corporate structures have enjoyed political stability since its inception. There was a major review of the operation of the Manitoba plan in 1988, however, and in November 2002 the Liberal Government in British Columbia considered whether mandatory automobile insurance should be privatized but came to the conclusion that no such change was demonstrated to be appropriate at the time. There appears to be no trend or indication at present of any political appetite to dismantle the public sole supplier aspects of the public plans in Canada. Similarly, in 1994 the newly elected NDP Government of Ontario recanted from a campaign proposal to implement a public insurance plan on the basis that it would be too costly.

E. Analysis of Private Delivery versus Public Delivery Models

A crucial consideration for this Task Force is whether the costs and in turn the premiums can be reduced by switching to a public automobile insurance supplier. The question has been examined extensively in British Columbia, Québec and Ontario.

1. Royal Commission on Automobile Insurance in British Columbia

The Government of British Columbia appointed a Royal Commission on Automobile Insurance of January 25, 1966 which delivered a report in 1968, (the "Wooton Report"). The Wooton Report considered a 1946 report to the Saskatchewan government, but concluded that the 1946 social and economic environment which led to Saskatchewan's public plan was quite different from the prevailing conditions in British Columbia[23]. It also noted that in New South Wales, government insurance did not come into force by direct government action but by the choice of private insurers to exit due to rate inadequacy.

Ultimately the Wooton Report did not recommend a public model for British Columbia for the following reasons:

- under an exclusive government fund, there would be rigidities and more limited innovation that would offset reductions in the percentage of the premium dollar siphoned away in expenses;
- the magnitude of savings would be reduced in any case by introduction of a no fault scheme;
- there were external diseconomies inherent in introducing an exclusive government fund for auto insurance compensation;
- the industry is not a natural monopoly;
- effective competition is attainable in auto insurance and will result in greater efficiency and fair pricing[24].

The Wooton Report concluded the rate increases over the years prior to 1966 were excessive, lacked justification and were based on faulty judgment but that more vigorous competition would have eliminated much of the problem[25]. It emphasized that it was inappropriate to bring public insurance into effect without giving the private enterprise participants due notice of an intent to change and to allow them a fair opportunity after receiving notice from the government of dissatisfaction with the conduct and performance of the industry. It recommended the opportunity be given initially to private enterprise but if it refused to accept the conditions of government or later showed a disinclination to compete, then government should take over.

2. Report of the Manitoba Automobile Insurance Committee - 1970

The Government of Manitoba appointed a committee in 1970 to advise on the implementation of a public auto insurance plan. The Committee stated that the existing rating system was based on a loss factor of 67% as representing claims costs plus allocated adjustment expenses. It concluded that the existing system was designed to return only 62.8% of the premium dollar to traffic injured.

It concluded that the then present method of automobile insurance and compensation for traffic injured was inadequate, expensive and confusing to the public. It identified the following problems:

- Dissatisfaction with lengthy delays in claims service, adversarial nature of the settlement process and excessive costs to adjust and assess losses;
- Motorists avoiding placement of coverage due to high cost of insurance;
- Excessive and duplicative administrative costs;
- Exclusion of investment earnings from revenues used in rate calculations;
- Unduly complex and unfair rate calculation systems;
- Lack of innovation by private insurers[26].

While it recognized substantive change would produce some inconvenience and confusion to motorists, insurance agents, companies, and the public in its introduction with attendant adjustment problems, among the recommendations it made were the following:

- Responsibility and control of a new system should be undertaken by one government agency;
- The creation of a Crown Corporation to administer the Insurance Plan;
- The plan must be compulsory for all owners and operators of vehicles and benefits available to all persons suffering loss in Manitoba auto accidents;
- The plan would be based on the Saskatchewan plan but incorporate higher benefits in some areas and allocate higher proportions of premium costs to drivers and less to owners;
- An imposition of a gasoline tax would be an alternative or additional method of raising premiums.

It confidently forecast that its recommended Plan would return 85% of the premiums paid by motorists to those who suffered losses and said the Plan's rate structure and financial operation would be based on that loss factor. It found support in the experience of the Saskatchewan Plan which it said had successfully operated at that ratio since 1946, built a surplus and reserve fund in excess of $4.5 million and supported a Driver Education and Training program at a cost of $693,247.

The premiums would be payable in each case in advance at the time of driver licensing and vehicle registration, and since it would not be required for immediate use would be available for investments. The reserve funds generated for future liabilities in the form of earned premium reserves, provision for unpaid claims and for other contingencies would also be available for investment purposes. It said those earnings would be retained in the fund to reduce premiums or increase benefits. It also said that while the investment income would be small in the initial stages, it would increase over the years, and would be available for purchase of provincial and municipal bonds and debentures which would be a secondary benefit to the province. It noted that SGI reported in 1968 an investment in excess of $28,000,000. While it acknowledged that the private auto insurers purchased some provincial securities, those investment earnings benefits were not returned to Manitoba motorists or considered in the financial results of the existing auto insurance system.

The Committee predicted the provision of the insurance coverage and administration by one government agency would create consistency in the basic compulsory protection and interpretation and application of the Plan. It would avoid duplication of costs where otherwise numerous agencies perform an identical service and predicted mobility and freedom to innovate Plan improvements with minimum resistance. It suggested a government agency would be sensitive and responsible to public reaction and needs[27].

The Committee considered that since the Plan imposed on motorists the responsibility to insure and pay the cost of the Plan, it was then comparable to any other public utility, and all of society should assume responsibility to provide the service at a minimum cost. As such, government would be even more motivated to minimize accident costs through progressive traffic legislation or it would see increased accident costs which would result in increased premium costs. By doing so, it considered the government through the Crown Corporation would be better able to extract the maximum saving in administrative costs and would function in unison with other government departments[28].

The Committee predicted the volume of risks in one agency would facilitate establishment of claims centers in more populated areas in the province and be more feasible to support centers, and provide qualified appraisals and more efficient adjusting services.

The Committee recommended a concentrated public relations program to inform the public of the benefits afforded by a public agency, the cost of such benefits and the procedures by which the benefits would be obtainable.

The Committee recommended discontinuance of subrogation rights against automobile insurers by hospital, medical insurance and workers compensation to eliminate and reduce duplication of such services.

The Committee recommended further study of development of a less costly system for recourse for traffic accident claimants.

3. Report of the Committee of Inquiry on Automobile Insurance Government of Québec 1974

The Committee undertook an extensive analysis of the existing Québec system beginning in 1971. Its report, ("the Gauvin Report") delivered in 1974, recommended that the private delivery system be continued. It proposed reforms to that system from which it projected savings of 19.5%[29].

The Gauvin Report noted that the cost of capital had its price in private enterprise which in the 1970s amounted to 3% after taxes. The Committee did not agree that a government monopoly would see additional savings by eliminating this expense. Instead a public insurance plan had to act as a mutual insurance company or as a cooperative and that motorists would have to contribute to fund adequate reserves for paying indemnities and be called upon to cover an operating deficit. It said the price of this obligation was a fair *quid pro quo* for the cost of private capital[30].

The Committee noted the advantages of competition included

- procuring guarantees of efficiency, efficacy and evolution especially with regard to claims settlements;
- administrative methods;
- adaptation of rates to changing conditions.

It noted the advantages of a government monopoly included:

- integration of rate setting, risk underwriting and marketing operations with machinery for registering vehicles and issuing drivers licenses;
- government participation in indemnification of traffic injured would emphasize its commitment to road safety;
- allowing coordination of indemnities with other social security plans while providing cost of living adjustment and favoring injury rehabilitation[31].

When the Committee undertook its work, it was aware that the governments of Manitoba and Saskatchewan had implemented public schemes and that the Wooton Commission in British Columbia had clearly opted for the private administration of a no fault indemnification plan. It noted that the contributing factors to the highly costly system in Québec included

- the cost of determining fault and appraising damages;
- marketing;
- rate setting and risk selection;
- weak competition;
- insufficient control over auto repairs.

It thus proposed measures to restimulate competition, including:

- restructuring the statistical plan to better reflect the diverse category of insureds and their relationship to the risk;
- giving the Superintendent responsibility to approve rates for high risk drivers;
- penalties to insured who made material misrepresentations on policy applications;

- insurers required to file rates with Superintendent for better access by the public creation of appraisal centres for property damage.[32]

The Gauvin Report further cautioned that a public monopoly should not be used to eliminate the role of the brokers or the risk rating function since they ensured motorists continue to receive proper advice about coverages and to have individual risks accurately identified.

4. Report Of Inquiry into Motor Vehicle Accident Compensation in Ontario 1988.

The Osborne Report examined the question of whether the pure premium in British Columbia, Saskatchewan, and Manitoba ("the western provinces") was lower than Ontario because the public monopoly model was more efficient than the private model. It concluded that simplistic premium comparisons (i.e., that the premium paid by a single male aged 21 in Ontario who drives a Honda Accord for pleasure and to work under 15 kilometres and has a five year clear record, with the premium he would pay in Winnipeg, Regina or Vancouver) do not assist in assessing the cost efficiency of public and private systems or what the premium would be in a certain province if it adopted a public insurance delivery system[33]. It considered that such comparisons were misleading or at least unhelpful and gave two reasons which are considered in detail below.

The first reason was that territory is always a variable and territorial differences affect premiums by giving rise to differences in accident frequency and accident severity which in turn are affected by geography and traffic density, as well as by the provincial compensation laws, which in turn affect average claims costs. Accordingly, assessing average claims costs in each province is necessary to assess premium levels across provinces and this calculation is made by taking the total claims costs including adjustment costs and dividing it by the number of insured vehicles. This calculation produces a measurement of actual loss costs in any given territory and is called the pure premium. The pure premium displays what amount of premium is needed to pay losses and loss adjustment expenses but does not include operating expense, profit, if any, and investment income. As such a pure premium in a smaller provincial centre, as for example, Kenora was much less than the pure premium in Toronto and for Ontario as a whole. Moreover, the pure premium in Saskatchewan in 1985 was about the same as that for Ontario farmers. The Osborne Report did concede that the part of the pure premium calculation that might be affected by efficiency considerations was the claim adjustment expenses, which accounted for 11% of the premium dollar. It concluded that differences in loss costs would cause justifiable differences in premiums and those differences would continue whether or not a province implemented a public monopoly insurance supplier[34]. It concluded that higher loss costs in one territory over another was due to factors such as geography, traffic density, the mix of high and low risk drivers and the provincial compensation laws.

The second reason given by the Osborne Report was that the classification systems used to determine rates in each province differed[35]. It explained that private enterprise schemes used an effective risk rating process to accurately reflect the expected loss costs, which encouraged them to innovate in order to continue to be competitive and effective. This rating process encouraged drivers to change their behaviour to become part of the lower risk group or if they were very high risk drivers, to stop driving and ultimately benefit the consumer who by the process secures a lower premium. Very simply, if MPI, for example, were to move to a private enterprise province and compete with insurers, it would either have to refine its classification system or lose all its good business to the private sector. Moreover there is much cross subsidization in the western province public plans which have eliminated age as a rating variable. Accordingly, young drivers pay lower premiums than are actuarially justified as a matter of social policy not sound insurance principles. This means by sound insurance principles, other drivers in the system pay more[36]. The classification systems of each of these western provinces will be discussed in more detail below. The Osborne Report concluded that in the public plans, all high risk groups were subsidized by low risk groups. It considered the cross subsidization in British Columbia with its more complex classification system to be "*considerable*"; in Saskatchewan and Manitoba with its very simple classification system to be "*extensive*", and in Québec, with the flat premium structure, to be "*massive*". It noted that in late 1987 and early 1988, each corporation in British Columbia, Saskatchewan and Manitoba had announced substantial premium increases that proved no insurance system can indefinitely pay out more than it brings in, and if costs exceed revenues in a public delivery system, either premiums or taxes have to increase[37].

(a) Are there social values or benefits that should be considered in the question of whether to adopt a public insurance delivery system?

The Osborne Report also considered the philosophical issue of benefits to be gained by nationalizing an important service industry in a province that had a long history of a free market economy and in which a large segment of the population continued to accept a free enterprise philosophy. It also noted that such a shift would entail significant financial and organizational implementation requirements. To illustrate the substantial implementation costs, it noted that in 1986, the provincial operations of one large Canadian insurer, Co-operators, were larger than the entire MPI Autopac although Co-operators had less than 10% of the Ontario market. The four leading Ontario insurers, which together had about 27% of the Ontario market, wrote more automobile insurance business than ICBC in 1986[38].

A switch to government ownership would have an impact on lives and occupations of those currently employed in the auto insurance industry, including company representatives, brokers, agents and adjusters. While some would be employed or engaged by the provincial Crown Corporation(s), others would have to retrain or relocate themselves and families because some aspects of the operations would likely be centralized. As well, there may also be an impact on the rest of Canada's automobile insurance and general insurance industry.

In practice, the adoption of a public plan would involve a change in ownership from private insurers to a Provincial Crown Corporation(s) and a change in market structure from a competitive environment to a monopoly. If a public plan adopted the simplified risk rating characteristics of ICBC, MPI and SGI, and private insurers were allowed to compete with a risk rating system based on actuarially sound risk rating variables, the public plan would eventually wither[39]. The public monopoly insurer could not compete with the private sector without transforming its rating practices but then it would have to abandon its philosophy of presuming all drivers were good risks until proven otherwise.

(b) Are there cost efficiencies in a public scheme that will lead to lower premiums?

The Osborne Report considered that this question required an evaluation of the economies of scale, probability of claims or operating expense reduction and the benefit to be derived of elimination of private sector profits. His conclusions are reviewed below.

(i) Economies of scale

The Osborne Report agreed with a study commissioned by it which concluded that an Ontario public automobile insurance corporation would enjoy no significant economies of scale in the writing of auto insurance over the major Ontario private enterprise insurers.

(ii) Expense efficiency

When the Osborne Report looked at expense efficiency, it found commission costs were substantially higher in Ontario than those in public plans; that the claims adjusting ratio in Ontario was within the high part of the range of the public plans and the administration or operating costs (which includes all expenses other than claims adjustment expenses and commission) were clearly higher (11.1%) than the averages for ICBC, (6.6%) MPI(4.3%) and SGI (0.9%). It concluded that there were no or only small cost savings in claims adjusting expense.

The Osborne Report noted that commission or business acquisition costs were lower in the public plans but that was a product of monopoly as opposed to competitive delivery rather than a public/private issue[40]. In the private sector, insurers must provide a commission based incentives to secure the business from consumers through a broker. Although direct writers do not have this expense, they have indirect business acquisition costs since they must establish a corporate identity or market recognition.

Uncertainty was expressed in the Osborne Report about the differences in other operating costs beyond broker commissions. It considered part of the difference in operating expense was due to the fact that public plans use a simple classification system and perform no underwriting functions. It agreed that a public scheme would produce important cost savings in lower business acquisition costs, (mainly broker commissions) and some cost savings in other operating expense as a result of the absence of competition. It did not find that public plans had found any specific method to write automobile insurance in a more efficient way[41].

In the short term a public scheme, if given monopoly position, would be expected to have lower costs than private sector insurers if the start up costs of a public plan were ignored. The Osborne Report thought the costs in Ontario of a public monopoly plan would approximate those in British Columbia[42]. It concluded with a costless conversion to public delivery, the cost saving would total about 7% or $43 per vehicle[43]. Part of that cost saving would be achieved by abandoning the classification and underwriting system in place then in Ontario. It concluded that a change to the classification system to an ICBC plan would mean that 43% of the then low risk drivers in Ontario would face premium increases of about $55.

The Osborne Report concluded that the start up costs for an Ontario public insurance corporation would involve far more than for example renting 3 floors in an office building in Mississauga. It noted that even if existing facilities were used, office space would represent a cost to the system. There would be the cost of personnel, claims and administrative offices to be established throughout the province. It said that the cost for Ontario would be far more than the start up cost of ICBC in 1977 which itself would have grown to approximately $350 million in 1987 dollars[44]. It also noted that the start up costs would be reflected in increased premiums, taxes or both.

The Osborne Report mentioned that monopoly delivery would foreclose access to benefits of competitive pricing and the incentive to keep premiums low but could not quantify its impact. It considered that a simple classification system would reduce premiums to high risk drivers, which would increase their presence on the road and in turn increase accident frequency and severity, which would increase claims costs and eliminate the theoretical cost decreases in operating expenses.

(iii) The profit argument

The Osborne Report considered and rejected the argument that substantial profits of insurers would be eliminated under a public monopoly such that consumers would have lower premiums. It concluded that if insurers were out of business, consumers would be denied the benefit of lower premiums resulting from competition. It found on the available evidence that in the several years before its report, there were no "excess" profits in the auto insurance business in Ontario.

(iv) Social benefits and other considerations

(A) Choice and competition

The Osborne Report considered that freedom of choice and benefits of competition were an advantage to consumers of mandatory automobile insurance.

(B) Fairness in premiums

The Osborne Report considered the extensive cross subsidization in public plans which occurred because there are no suitable premium ratings surrogates for age and gender except for surcharges or discounts levied after the fact. It observed that cross subsidization had the perverse effect of allowing some high risk drivers onto the road who might not otherwise be able to afford insurance and it concluded this result was inequitable and a significant disadvantage to public delivery systems[45].

(C) Availability and affordability

The Osborne Report concluded that the public delivery system directly, and the private delivery system through the Facility Association, both guaranteed the availability of insurance coverage. As to affordability, it did not consider a public plan had any advantage over the then private Ontario system, and as in any insurance plan, public or private, premiums and investment income had to be sufficient to pay claims and other expenses. There was no magic in public delivery to dilute that fundamental business principle[46].

(D) Compliance

The Osborne Report found that public plans had done a better job at integrating licensing and insurance requirements than the Ontario government and private insurers. It said that gains by such integration would be expected to be modest considering that in Ontario in 1987 the number of uninsured drivers was estimated at less than 2 percent[47]. It noted that the integration of licensing and insurance requirements:

- permitted surcharges and discounts that promoted deterrence;
- lessen after the fact the extent of cross subsidization of public plans;
- likely allow an owner whose vehicle is driven by a high risk occasional driver to pay a lower premium than would otherwise be the case, and
- produce a capacity to assess individual drivers that is a distinct advantage of public automobile insurance.

(E) Traffic safety and accident prevention

The Osborne Report agreed that interest in and opportunities for the promotion of traffic safety are likely to be greater in a public than a private delivery system, but thought any government should be committed to this topic whether or not it is in charge of the automobile insurance system.

(F) Impact on repair costs

The Osborne Report found that the cost of labour, shop and paint material was much lower in Ontario than British Columbia, Manitoba and Saskatchewan which it thought might be due to competition.

(G) Other matters

The Osborne Report noted that public plans pay no corporate tax but thought that the fact that such plans operate on a break even basis was beside the point because loss of corporate tax revenues may need to be balanced through higher taxes in other areas[48]. It found no merit or truth to the argument that public insurance plans concentrate their investments within the province. It found no evidence to suggest the customer satisfaction was greater or lesser under a public plan than a private delivery scheme. It also dismissed the argument that public plans are beneficiaries of an indirect subsidy because they do not require an equity cushion that regulators in private sector delivery schemes demand.

The Osborne Report found that the Woods, Gordon & Co, Report on Government Ownership of Automobile Insurance of January 1978 ("Woods Gordon") provided a balanced assessment of the issue and that it had stopped short of recommending government auto insurance for Ontario. It noted that in doing so Woods Gordon had identified the potential for cost savings on converting to a public plan based on the return of a higher percentage of its total revenues to claimants in the form of benefits through avoidance of business acquisition costs and lower levels of administration and delivery costs achieved through economies of scale and major structural differences between the government and private industry systems.

The Osborne Report considered that the cost savings potential was less than the Woods Gordon report (then 10 years old) indicated. However, it specifically discounted other factors which had been mentioned by Woods Gordon in their report against the case for public auto insurance in Ontario including:

- The trend to inefficiency in management techniques and operations because of the lack of competition under a public plan;
- The fact that hidden subsidies may be utilized to cloud true costs in a public plan;
- The possible illusion of low premium costs in a public plan;
- The possibility that the government corporation will become a political vehicle and deviate from sound insurance principles;
- The vulnerability of a public plan to labour problems and pressure groups such as body shop operators, and tow truck fleet operators; and
- The tendency of a monopoly insurer to oversimplify adjusting decisions.

In conclusion, the Osborne Report stated Ontario taxpayers and drivers would not benefit from a conversion to public insurance. It thought the cost savings would be offset by the start up costs in the short run and would be eroded in the long run by other cost based considerations, particularly elimination of the potential for lower premiums derived from competition.

5. Alberta Automobile Insurance Board Report 1991

Conversion to a public scheme was outside the terms of reference when the Alberta Automobile Insurance Board reported in 1991 ("AAIB Report"). However Professors Trebilcock and Chapman provided input to AAIB (the "Trebilcock Report")[49] in which they noted one study[50] that had concluded that the creation of a public insurance monopoly was responsible for savings of 14% as a result of cost savings in business acquisition costs (brokerage fees) and underwriting costs.

6. KPMG Report

In 1996 the Government of British Columbia commissioned a study by three consultants including: KPMG, Eckler Partners and Exactor Services Inc. ("the KPMG Report")[51]. This report made the following observations about the distinction between private and public delivery systems.

In a competitive market, pricing cross subsidies between different coverages or classes of insureds do not survive long because the structure of the system works toward a goal of making price proportional to the risk. In monopoly market, cross subsidies can be designed and sustained indefinitely. ICBC had historically built such pricing cross subsidies into the compulsory part of the product. As such it was open to criticism that it is unfairly undercutting the price for optional coverages through cross subsidization by setting unnecessarily higher prices for the compulsory product for which it is the monopoly supplier[52]. This problem was addressed differently in Québec by leaving the property coverage to the private enterprise market.

Attacking retained earnings of private insurers undermines their ability to function under the financial adequacy tests required by federal or provincial laws[53]. The private enterprise model can provide customer service advantages such as better service, lower premiums, innovative insurance products and alternative product distribution channels. Where private insurers compete for some portion of the market, a public company can lose the optional premiums of low risk consumers where the differential between the premium and claims risk is substantial.

A public insurance model requires ongoing vigilance, self-examination and renewal to ensure protection of the motorists and traffic injured[54]. It can undermine strategies for elimination of collateral payments since the claimant may feel deprived of an entitlement regardless of other sources, and could limit the ability to manage health treatment and promote optimal recovery until the first source is exhausted and could make it problematic to obtain data to control and study costs and outcomes[55].

IV. RISK RATING, REGULATION AND CLASSIFICATION SYSTEMS OF MODELS IN CANADA

A. Risk Rating

A feature found to go hand in hand with a private delivery system is the process of experience, precision or risk rating to establish the levels of premium to be charged to policyholders. In private enterprise models, the philosophy has traditionally held that the premium should relate to the risk by reference to sound actuarial, statistical insurance underwriting principles. Osborne and the AAIB expressed support for this methodology. It is considered that the more effectively these principles are applied to the practice of risk rating, the more correctly risks are allocated among drivers, which reduces the tendency of cross subsidization. Cross subsidization is an undesirable result in insurance rating, because it unfairly allocates the cost of insurance to groups that present a statistically lower risk.

In some jurisdictions experience rating is restricted or eliminated altogether on the basis that its results produce socially unacceptable outcomes. Rating variables, which were used traditionally in auto insurance compensation models but were challenged in the mid 80's, are the factors of age and gender. Insurers, like other members of society, do not support unfair discrimination. Unfortunately, their experience has shown that the factors of age and gender do capture a combination of features of social behavior that tend to support statistical evidence of greater driving risks. There are no surrogates that can be introduced to the system that achieve both the goals of avoidance of random unfair discrimination and unfair cross subsidization. If age and gender are prohibited as rating variables, then low risk drivers subsidize high risk drivers. Cross subsidization has long term negative effects such as increasing risk of accidents to all road users which results in additional medical, social and financial costs. There is likely no resolution to this vexing problem that will satisfy all members of society. It must be recognized whatever view is adopted by a jurisdiction, it will result in certain unavoidable social costs to some segment of the motoring public.

B. Classification Systems

1. British Columbia

The ICBC Autoplan has undergone a number of iterations since its inception. Before 1979, ICBC used rating variables of age, gender and marital status. In 1979, the British Columbia government decided to eliminate age, gender and marital status as rating variables with no substitute rating factors in their place. Instead it implemented the FAIR programme. This programme treated all motorists as safe drivers until proven otherwise, which was based on social policy instead of actuarially sound principles together with a Claims Rated Scale. The CRS was a form of bonus/malus system used to apply a discount or surcharge to the basic premium on the basis of the insured's driving record. It gave a 10% discount each claim-free year up to a maximum of 4 years or 40% and a 30% surcharge for each claim[56].

As of 1988, ICBC used five rating variables including, value and age of the vehicle, the territory where the insured vehicle is principally operated, the purpose for which the vehicle is used, the claims record of the owner and a driver insurance premium based on the individual's driving record.

The ICBC Auto plan currently[57] uses six rating variables in its classification system, including:

- The purpose for which the vehicle is used (e.g. pleasure, drive to work);
- The territory where it is primarily located when not in use;
- The make, model, risk, age and original value of the vehicle;
- The costs of prior years' claims under each rate class; and
- What coverage is chosen.

2. Saskatchewan

Up to 1988, Saskatchewan's Auto Fund used a simpler classification system than that used in B.C.. Presently, SGI charges a standard premium for third party liability and no fault accident benefit coverage as well as a premium to cover all perils damage to the insured's vehicle which varies in accordance with the value of the vehicle. Surcharges are levied based on the individual's at-fault accident history and driving record over the previous three years[58]. Territory is ignored as a rating factor[59].

3. Manitoba

Before 1986, Manitoba used age, gender and marital status as rating variables. Since then, premiums have been based on the type and principal use of the vehicle with surcharges levied in accordance with a schedule of demerit points[60].

The Kopstein Report in 1988 made important observations about ratemaking practices of MPI including:

- assigned passenger vehicles to 9 rating groups according to base factory price rather that price, history of repair costs or accidents;
- avoided rating according to age, gender, and marital status as non-discriminatory and inappropriate;
- applied less discounts and surcharges than private insurers;
- employed merit points according to driver offences to greater degree than was available to private insurers;
- made collision coverage mandatory.

It concluded that premiums should be financed largely through vehicle characteristics but also in part by drivers and related to specific benefits. It recommended:

- the surcharge system should be restructured to provide deeper discounts to good driving and penalize poor driving but not so as to encourage driving without insurance;
- the gas tax and highway toll were unacceptable ways to finance insurance;
- there should be no material subsidies to Autopac by government.

The Kopstein Report recommended a statistically sound and actuarially determined rate making system.

4. Québec

All insured motorists in Québec pay the same premium for compulsory coverage provided by SAAQ[61].

C. Regulation

The KPMG Report observed that, when regulators act, it is usually because the price is too high or because equal or even handed access to services is missing[62].

In the mid-60s, provinces had set up mandatory liability insurance requirements to ensure a reasonable amount of liability insurance was available for those who had suffered injuries and property losses. Regulators were concerned over delays during disputes about liability and entitlement and traffic injured had no funds. Regulators imitated the Saskatchewan scheme for the mid-40s and added a section of accident benefits to the mandatory part of the policy (except Newfoundland and Labrador). The no fault benefits included a modest amount of weekly income replacement, medical expenses and death benefits to die claimants over in the short term.

It was introduced in Ontario in 1967 and followed by all provinces. The regulators became concerned again in the 1970s about auto insurance bodily injury costs[63].

When the Wooton report concluded that the model in British Columbia should remain a private insurance delivery system and that promoting competition would best serve the public interest, the corollary it recommended was a robust form of rate regulation to ensure the industry would conduct itself in a manner consistent with the needs and requirements of a mandatory automobile insurance system[64].

The Wooton Report recommended the creation of a separate body to act as an automobile insurance board and to take responsibility for securing from insurers data of premium income, expense costs, and loss ratio covering their annual operations in the province, for establishing that the premium rates are fair, yet adequate or amassing the data necessary for ratemaking[65], and for investigating and adjudicating complaints by insureds about premium rates and accident compensation. It recommended the Board be responsible to establish a maximum rate for compulsory basic accident policy on a province wide basis and to keep an actuarial check on rates charged by insurers for supplementary automobile accident coverage, out of province third party insurance and collision contracts. This it thought would ensure that adequate competition on these coverages was maintained and would satisfy the Government that excessive rates were not charged by any insurer on these forms of protection as a means of allowing the insurer to sell the compulsory basic accident policy at an unjustifiably low premium[66].

The Wooton Report recommended that the Board require and maintain statistical data concerning drivers licenses, accidents and violations from the Motor Vehicles Bureau in the form and with the frequency required. It would receive from all insurers carrying on business in the province a record of the premium rates charged for each classification and type of insurance relating to automobile accidents and a list of their claims regarding classification and type. It would also require annually the actual combined administrative and selling expenses covering auto accident insurance and supplementary insurance[67].

It further recommended that the Board have the duty to monitor the basic policy and its application and to recommend to the Government changes to coverage and benefits, as experience would warrant[68] and that the Board:

- act as a Board of Appeal to advise of occasions where a driver was refused insurance by any insurer and where justified to issue an order to the insurer to issue insurance[69];
- investigate all complaints against insurers and to recommend appropriate action to the Superintendent against any such insurer;
- in respect of the compulsory basic policy, that it have the power to hear appeals by insureds dissatisfied with compensation received or offered and to investigate such complaints with the insurer;
- decisions be final[70];

- be given the plenary power to perform other duties relating to automobile insurance as may be assigned to it from time to time[71].

The insurance industry in Canada currently is regulated by provincial governments and the federal government with respect to solvency, licensing, and operations of insurers and with respect to establishing requirements for reporting of financial statements, claims experience, terms and conditions for the standardizing of automobile insurance policies[72].

In the sphere of automobile insurance, regulation or review by government or a government authorized agency of the premiums charged by insurers for compulsory automobile insurance was first introduced in the provinces with private sector delivery of compulsory automobile insurance. Ontario and Prince Edward Island did not have government regulation of auto insurance premiums until November 4, 1987[73].

The most common models of rate regulation used in Canada have been market competition, file and use and prior approval[74]. None of these models contemplated rate setting. Under the market competition model, the regulatory agency monitors rates to identify the markets where market competition is not producing rates approximating those which would occur in a perfectly competitive industry. In such instance the agency would intervene, but otherwise adopt a *laisser faire* stance. There is no requirement to file rates or data on loss experience. This model allows competition to be the optimal regulator of prices and allows regulatory intervention only where there is no competition.

The file and use model contemplates that the insurer will put proposed rate changes into effect only upon filing or after a specified waiting period after filing. The filing would include proposed rates, evidence on losses, expenses and underwriting profits or losses[75]. The regulator had the authority to challenge a rate submission and conduct hearings or to resolve the dispute by compromise. This model was implemented by Nova Scotia in 1960.

The prior approval model requires filing and regulatory approval of rates before use[76]. The regulator might hold a hearing to consider the insurer's rate submission. This system has been in use in Alberta since 1970, New Brunswick since 1975, and in Newfoundland and Labrador since 1977. The jurisdiction of the Alberta board is limited by statute to the compulsory insurance only, whereas in Newfoundland and Labrador and New Brunswick, the regulator has had jurisdiction over the whole policy. The Osborne Report noted as to the practice of the Alberta Automobile Insurance Board ("AAIB"), that it dealt with most rate proposals by written submission, with an informal approach, borne of the belief that competition is the best method to improve the price to the public. It considered the very existence of a rate review board was likely to have a modifying effect on insurer behavior and that the informal approach likely allowed the AAIB to require an insurer to make changes to its application before an approval was granted.

In Ontario regulation had been nearly non-existent until 1988 except as regards the Facility Association[77]. At the time of the Osborne Report, the Ontario legislature had proposed rate regulation that would take Ontario from one of the least to one of the most regulated jurisdictions for auto insurance in North America, and was intended to include rate setting as well[78].

The Osborne Report endorsed regulatory supervision of automobile insurance premiums but not premium setting[79]. It said outside review of the competitive motivation of private insurers to charge reasonable premiums was socially desirable and the consuming public expects it. It said the public is entitled to external protection against unreasonable or unjust premiums, that a rate review body would exert a moderating influence on insurer behavior and it would bring some stability to the market. It considered that rate regulation should control both premium increases and decreases. It noted that the extent of regulation is the real question and should be proportional to the extent to which the competitive market does not achieve its full potential.

The Osborne Report considered that the two dominant objectives of rate regulation should be premium fairness as assessed against sound insurance principles and market stability which will ensure eventual benefit to the public. Appropriate rate regulation should provide a cost efficient mechanism for ensuring that premiums charged by individual insurers are fair and for ensuring market stability. It warned that the objective of premium fairness was far more important than that of achieving market stability and the former would not be achieved if the regulatory scheme were unnecessarily costly or works to inhibit competition among insurers.

Regulation should not inhibit insurers from being innovative in their rating procedures as this is beneficial to consumers. The regulator should have the power to approve deviated rates where refinements to the classification system may be involved but where rates are otherwise just, reasonable and sound in principle. If the regulator has the authority over the classification system and the authority to permit insurers to introduce refinements to the system, it will have the advantage of depoliticizing the establishment of appropriate rating criteria. Under this approach, the regulator must have the power to modify the classification system. The insurers should not only have the right but should be encouraged to innovate within reasonable perimeters. Reasonable perimeters would not include socially unacceptable rating criteria, as for example, gender or marital status.

The Osborne Report said that a public utility model of regulation was not appropriate to a competitive industry even if the product was compulsory as it would tend to encourage inefficiency by failing to provide positive incentives for efficiency. It warned that benchmark rates would take into account the experience of all insurers, efficient and inefficient, and thus congregate around the average industry experience which would deny the motoring public of the benefit of lower than average benchmark rates which would be charged by the more efficient insurers in a truly competitive market. Finally, it suggested that the benefits of the regulatory regime should be measured against the cost of it. It cautioned against development of a sizeable bureaucracy to administer the scheme and then to have those costs be borne by insurers and then indirectly the motoring public.

The Osborne Report concluded that the distinction between prior approval and file and use was less important than the manner in which the regulator actually supervises individual insurers in approving their premium rates. The fundamental mandate of a rate review board is to ensure the consumer secures the benefit of reasonable, just premium rates.

PART TWO: PRODUCT MODELS

V. A REVIEW OF ALTERNATIVE COMPENSATION MODELS

In is necessary to now turn to a consideration of the benefit structures available under a compulsory automobile insurance scheme. It will be recalled that the nature of the benefit structure is independent of the question of whether the benefits are provided by a sole government supplier, a private enterprise supplier or a group of private sector suppliers. **Graph 4** shows the seven alternatives to be considered. **Graph 5** depicts the existing compensation models in Canada.

The benefits aspect of a scheme creates a second area of confusion in the minds of the public since the terms "tort benefits", "no fault benefits", "pure no fault", "threshold no fault" and "accident benefits" are used in many different ways in discussions with the consumer, the media, politicians, stakeholders and service providers. Other terms to describe benefit structures are the compensation or benefit scheme. Whatever description is used, that which is being supplied is a series or package of entitlements that are paid out by an insurer as compensation for losses incurred by an person injured in an automobile accident.

As said earlier, all Canadians agree that there should be some monetary compensation for persons injured in automobile insurance accidents. Each province has the legislative authority to enact laws relating to this subject matter and over the years, the nature and extent of such benefits have evolved to meet the needs and expectations of motorists as interpreted by their provincial legislators. The benefits are intended to assist injured persons with their immediate medical, wage and out of pocket expenses.

One issue that often promotes disagreement within the community is whether all traffic injured should receive compensation however the injury was caused or whether there should be restrictions depending on whether the injury was caused by the fault of another or by the fault of the injured person, or by an animal on the highway. Other issues are whether compensation should be dependant upon proof of the nature and extent of damages and if a person should be entitled to have those losses measured and assessed in the judicial system. Reasonable people reasonably disagree about the way they and their governments should legislate treatment of traffic injured where the injuries have altered the lives of persons and their families forever. There is on the one hand, the question of how to punish and deter reckless and careless driving conduct and on the other hand, the question of how to ensure proper care and attention to those injured in traffic accidents.

As a starting point, it should be made very clear that there is no system in Canada that agrees to excuse bad driving behavior. The term "**no fault**", when it is used here, is meant to describe a certain category of benefits to be paid to a person injured in a traffic accident, without regard to the issue of whether that person was free from fault, partially or entirely at fault. The term "**tort**" refers to an event in which a person is injured through the wrongful conduct of another. Some systems require that all injured persons prove that their injuries were caused in whole or in part by a wrongdoer, and those systems are called "**tort" or "fault**" systems. Other systems have eliminated the requirement of injured persons to prove any fault before they are entitled to any accident benefits or compensation. These systems are called "**pure no fault**" systems.

The diametric opposite in Canada to the pure no fault system is a pure tort system that requires all traffic injured prove fault of another before they can receive benefits or compensation. This is the model that has existed in Newfoundland and Labrador, where the accident benefits have been optional if the policy holder chooses to purchase the same.

What remains in Canadian provinces that do not have pure no fault or pure fault systems are hybrids, those that contain some elements of both tort and no fault accident benefits. These provinces differ in the degree of tort and degree of no fault provided. For example, Alberta has a system that is mostly tort, but has some small proportion of no fault accident benefits. The accident benefits available are payable by a policyholder's own insurer irrespective of fault.

While British Columbia has a tort/hybrid system as well, it has much more generous accident benefits than are available in Alberta. On the other hand, Ontario has what has been called a "threshold system". Initially Ontario provided that tort recovery was precluded for most traffic injured, who instead were provided with more generous accident benefits than under the previous system while tort rights were preserved for those who could establish in court that there injuries were serious and disabling. However, the Ontario system has, since its inception, undergone a series of modifications and refinements. Currently Ontario has incorporated a feature called a deductible which restricts recovery for the pain and suffering component of the compensation awards of those with less serious injuries.

There are numerous variations to the type of hybrid compensation schemes that could be introduced. There have been tort models that have been modified by the addition of enhanced or add on no fault benefits. There have been comprehensive no fault schemes to deal with injuries however caused. In New South Wales, the previous system was a tort scheme with a deductible. In 1999, it was modified to restrict recovery even further, and it altered the goals of the scheme as a means of cutting service provider costs within the system to attain long term premium stability. Doors to new variations in automobile insurance compensation schemes should never be considered closed.

Whether a scheme is tort or no fault relates to two questions: how are drivers assessed costs for the loss costs they cause in accidents and how are traffic injured compensated?

The losses caused by driving accidents, whether due to driving behavior that is dangerous, careless or even momentarily inadvertent, may be non existent, minor or major. Whether the losses are many, although minor, or few and major, or some of both, they result in high costs for medical treatment, loss of work and wages, and may result in further costs in terms of enduring future losses. The totality of those costs must be paid eventually by all the motorists who drive and who must purchase compulsory insurance, including those motorists who have never caused an accident or received a ticket for a driving offence from the local police force. There is a direct correlation then between the loss costs and the accidents, and in turn between the amounts of benefits paid to traffic injured and the increases in premiums paid by motorists. The issue of premiums to be paid under a particular compensation system is affected by the type of system under consideration, whether fault or no fault, but the premium discussion can be considered separately from the question of how injured persons are compensated. With these aspects in mind, we consider the alternative models.

Tort law provides that when a person is insured by the fault of another, the injured person should receive that sum of money which will restore the traffic injured to their pre-accident state as far as possible. Innocent victims are entitled to receive not only their actual pecuniary or economic losses, such as loss of earnings, medical and rehabilitation expenses, but also non-pecuniary losses for pain and suffering and loss of enjoyment of life. Many tort schemes have additions or modifications to the general tort principle enacted by statute or case law. For example, in the case of non-fatal accidents, the Supreme Court of Canada enunciated general principles to govern the measure of recovery for non-pecuniary losses and established a rough upper limit of $100,000 (indexed for inflation so that the current ceiling on non-pecuniary damage awards for the most serious injuries is now around $290,000[80]). This award acts as a cap on the upper level of damages which many catastrophic injuries may reach.

In addition to the tort benefits, an injured person who has accident benefits automobile insurance, may claim against his own insurer for accident, medical, death or income replacement benefits irrespective of fault. These are also described as "first party" "Section B", "Part 7", "accident benefits" or "no fault accident benefits". These benefits, when paid, are deducted from any tort award. A chart of the current accident benefits in each province is shown in **Graph 6**.

The Trebilcock Report maintained that it is very difficult to evaluate the efficacy of one such system with others, because one must first be clear about the criteria for evaluation. It has also pointed out that there is much controversy surrounding such criteria and often disagreement about what the goals of each scheme are, how well such goals are achieved, and how much better or worse alternative schemes could promote those objectives[81]. Nevertheless, below is a summary of the principal advantages and disadvantages of each model derived from the evaluation process.

A. The Pure Tort Model

Osborne noted that the tort model is the most generous method of compensation of traffic injured provided they can prove fault. He considered the argument that it should be made the only method of compensation in Ontario and that mandatory no fault benefits should be extinguished. This would have left motorists to purchase accident insurance on an optional basis, or to look to private employment insurance plans as many people had basic short term or long term disability plans at their place of work, or to public programs. He also considered the opposing argument that it is right that governments demand those who break the rules of the road have the means to satisfy the plaintiff's judgment. He concluded there was no justification by current social policy or substantial cost savings to support the elimination of mandatory no fault accident benefits. They are inexpensive, provide necessary income and medical protection to those injured who do not have first party insurance sources and, if they were optional, the cost would be prohibitive for those who did require them[82].

B. The Maximum Tort Minimum No fault Model

Osborne noted that the modest accident benefits initially introduced in Canadian provinces, if designed to remove minor injury cases from the court system, did not do so, but rather have acted as a spur to litigation by removing the pressure to effect early settlement. He noted that the proper level at which to set these benefits turns on the goal to be achieved by compulsory accident benefits, that is whether they are to do more than ensure basic income maintenance, medical protection and access to rehabilitation without delay. He also noted that many are required to purchase this package when they are already covered by short and long term disability programs such that they are not likely to use the benefits at all or only to a limited extent[83].

1. Deterrence/prevention

It is argued that once a tort system includes compulsory third party liability insurance, the conversion to a no fault scheme is unlikely to reduce traffic safety. This viewpoint is supported by data showing that most drivers commit driving errors and that it is wrong to think that most accidents are caused by a small group of hazardous drivers. Despite these data, many accept that civil and criminal sanctions do sensitize drivers to the consequences of that behaviour; that tort law stigmatizes risky driving conduct and helps reinforce socially responsible attitudes to risk taking. This view accepts that insurance premium levels geared to exposure levels reduce risky driving activity which in turn reduces accident rates.

6

The Osborne Report noted that the public understands and accepts the rules of the road, agrees that individuals should be responsible for individual actions and believes the system should not compensate a drunken injured driver in the same way as a sober one. As such, the tort system performs a modest deterrent function[84]. The AAIB Report concluded that an auto insurance system should try to deter driving conduct that could cause or contribute to accidents and that experience rating was a necessary element to the system to encourage high levels of driving care as the means of avoiding premium increases. It agreed that tort models were most effective in achieving the goal of deterrence[85].

The Kopstein Report concluded the ability of tort to deter negligence was not supported by the evidence. It stated emphatically[86] that the concept of fault as a device for the compensation of traffic injured was inequitable because it can fail to compensate at all some who are innocent of negligence, can fail to compensate some innocent traffic injured because the tortfeasor is not sufficiently insured and will not compensate those normally careful drivers who are negligent due to a momentary lapse. It considered that a system which must subject a majority of people who are normally careful to the possibility of severe prejudice for an occasion of inadvertent negligence in the mere hope of deterring the negligence of a fringe group had little to commend it[87].

2. Adequacy of Traffic Injured Coverage

The principle of compensation under a tort system is to return an injured person to his or her pre-accident state as far as possible. The AAIB Report noted that where fault is proven and an injured person receives the entirety of the judgment awarded there is full recovery of economic and non economic losses and sometimes even greater than 100 % recovery in cases where there were collateral benefits, contributory negligence and recovery of gross wages net of tax. It noted that the tort system did not fully compensate all traffic injured; that claimants with minor injuries were overcompensated, and those with catastrophic injuries were under compensated.

The Trebilcock Report said that in tort systems, although those with a valid tort claim usually recovery full economic and non-pecuniary losses, about 40% to 50% of traffic injured do not have a valid tort claim, and either have no claim against available insurance or a claim for only minimal benefits[88]. The issue of adequacy of traffic injured coverage in a scheme depends then on whether the motorists of a given province affirm the primacy of the principle of fault in their compensation system.

3. Cost internalization

Under the tort system, the operative principle is differentiation between those drivers who do and do not bring a high risk of loss into the system. Osborne considered fairness in allocating compensation costs was based on setting premiums according to sound insurance principles and use of risk rating to internalize accident costs to drivers most likely to cause harm. This process differentiates premiums among drivers by reference to their previous driving history of at fault accidents, traffic convictions and accident rates of the statistical group to which the driver is assigned. Insurers determine premiums according to the likelihood of future claims.

In practice, insurers typically limit the rates that might be justified on strict actuarial principles but would be otherwise prohibitive for some drivers. Together with the Facility Association, private industry provides auto insurance to high risk drivers who have difficulty finding insurance in the marketplace. However, the effect of Facility placement of high risk drivers means that other drivers subsidize that group for the cost of insurance or the cost of losses incurred by the system. Where an automobile insurance system accommodates all drivers, whatever risk they present, other drivers must pay more for insurance to cover the cost of those risks. Risk rating principles used to determine premiums are muted by the requirement that the system provide reasonably affordable insurance to motorists. Insurers do not apply the risk rating principles rigidly in the case of mandatory insurance.

Cross subsidization of high risk drivers by low risk drivers compromises the cost internalization aim at by the application of risk rating principles. Other income replacement schemes such as workers compensation, CPP and unemployment insurance also limit the goal of cost internalization to wrongdoers. The recovery of collateral source benefits and the right of subrogation on the other hand tend to promote cost internalization and corrective justice.

The Trebilcock Report concluded that the tort model best achieves cost internalization[89].

4. Operational Efficiency

In tort systems, there is considerable delay in payment of benefits. Some data estimate that compensation under this system costs as much to administer as is ultimately available to traffic injured[90]. The reason is that the tort system requires assessment of quantum issues in every case. Data estimate the operating and claims adjustment costs to represent about one quarter to one third of each automobile insurance premium dollar. Some studies suggest such costs could be reduced by 10-15% under a pure no fault system. Data also suggest that claimant legal expense under the tort model equals another 10-15% of the premium dollar. Studies estimate the savings attainable by conversion from a tort to a threshold or no fault system in ranges of 5 to 24 percent[91].

American studies have shown that in tort states, there is an average net payout of 43.2 cents of every premium dollar to claimants compared to an average payout of 50.2 cents in threshold states. Although warning that the exercise of estimating the percentage return should be viewed with caution, Osborne estimated the Ontario tort system in 1987 returned between 55.8% and 64.7% of the premium dollar to traffic injured[92]. In Québec, it was estimated that the fault scheme before pure no fault returned 59% of the premium dollar, but under pure no fault between 1978 and 1987, the net return to consumers was estimated at 77 % of the premium dollar[93]. That estimate has since been revised to 61% but as of 1992 it is now reported at 96% (see p 78 below).

5. Premium Costs

In comparison to other models on the criterion of premium cost, the AAIB adopted the view of Trebilcock that the tort system ranks lower than other models because a significant percentage of the premium dollar goes to payment of non–pecuniary losses and higher administrative costs which are a function of the principles of full compensation for pain and suffering and compensation based on fault[94].

The AAIB Report noted that reforms to reduce the costs of claims include most significantly[95] the elimination or reduction of the right to claim for non-pecuniary general damages. Such reduction would reduce deterrence by reducing the risk of increased premiums to at fault drivers and would reduce the amount of compensation to traffic injured, some of whom otherwise receive complete or more than complete compensation. As well, restricting this recovery would reduce cost internalization by allowing some wrongdoers to escape for minor injuries they cause. Finally, it would increase operational efficiency by reducing claims adjustment and litigation expenses for many claims in the system.

The AAIB Report noted that other tort reforms such as mandatory structured settlements, modification of prejudgment interest rates, variation of rights of survivors in fatal accident cases and abolition of collateral benefits would have additional positive, although only modest, cost saving effects[96]. On the other hand, restrictions on the right to recover non-pecuniary damages can generate more substantial cost savings depending on the extent of time restrictions.

The AAIB Report received a cost estimate in 1990 for a reduction of all claims for non-pecuniary general damages by $10,000 (with an increase in the judge made limit for catastrophic injuries to $300,000) suggesting the saving would be about $30-40 per vehicle[97]. The AAIB Report concluded that reducing non-pecuniary general damages would preserve the strongest features of the tort system, i.e., deterrence and cost internalization depending on the extent of the reduction and would promote the goals of containment of loss costs and premiums.

C. The Enhanced Add-on No Fault Model

This model was recommended by the Osborne Report. Its no fault accident benefits are substantially enriched in comparison to the tort models above discussed, but the right of traffic injured to sue is not curtailed (subject to some tort reforms recommended, for example, the abolition of the collateral source rule[98] and subject to the subtraction of no fault benefits from awards against third parties). It is assumed in making its recommendation the Osborne Report assumed that indemnity payments such as unemployment insurance and employment disability insurance would be deducted from any tort award and from any no fault benefits payable to traffic injured. It also assumed that the no fault benefits would be deducted from the tort award. Finally it assumed that no fault benefits would be provided through mandatory properly risk rated first party insurance to all traffic injured.

1. Deterrence/Prevention

It is likely that an enhanced add on no fault model will tend in the direction of decreased deterrence/prevention but there are several factors at work, some of them conflicting, and it would be difficult to quantify the net effect. Firstly the insurers of negligent drivers do not have to bear the full cost of third party losses because no fault benefits would be subtracted from a damage award. In some cases where the no fault benefits approached full compensation, there might be no tort action at all. The consequent reduction in insurer claims costs would be expected to reduce premiums for at fault drivers which in turn would reduce deterrence[99]. This might be offset to an extent when the claims experienced of at fault drivers began to cause an increase in their no fault benefit premiums. In some cases enhanced no fault benefits might allow claimants to litigate for greater tort benefits which would increase premium costs and in turn deterrence. Finally enhanced no fault benefits of this model provide a safety net against the self-inflicted injuries of negligent drivers which would go uncompensated under a pure tort model. This would be expected to decrease deterrence[100].

2. Adequacy of Traffic Injured Coverage

This model is superior to a pure tort law regime in terms of the percentage of traffic injured receiving any compensation. The data show that all significant traffic injured qualify for no-fault benefits[101]. There is some data to show that that there are more undercompensated traffic injured under this model than under a pure tort model in the cases of the most serious injuries, but other studies show little reduction in tort litigation in add-on states[102].

3. Cost internalization

The Osborne Report convincingly argued that fairness in allocating cost of auto insurance compensation required setting of premiums according to sound insurance principles, so that accident costs are internalized to the drivers most likely to cause them. This process is called effective risk rating which is achieved by differentiating premiums by reference to a driver's history of previous at fault accidents, traffic violations, and reference to the accident rate of the statistical group into which the driver falls. Insurers spend considerable time and energy developing risk rating variables to assist in determining which drivers are likely to create higher and lower risks of accidents and attempting to charge rates accordingly to those drivers.

Effective risk rating cannot be applied without some modification in the compulsory auto insurance context because Canadian society and governments also demand that insurance premiums be affordable for all. Moreover, the negative deterrent effects from cross subsidization by low risk of high risk drivers can be serious. Since it is usually easy to ascribe fault in most accidents, premiums should be effectively risk rated under this model, although less attention will be given to fault determination where no law suit occurs than in those that do.

To the extent then that there are fewer law suits under this model than under the tort models, the precision of risk rating will be weaker[103]. Further, there are special problems in setting proper premium rates for motorcycles and trucks[104]. It is considered unlikely that this model is better than the tort models at internalizing the cost of traffic accidents to driving activity generally[105].

4. Operational Efficiency

It is not clear that an enhanced add on no fault system would reduce the number of law suits relative to tort systems. If it did do so, there would be reduced administrative costs, claimants legal expenses, which in Canada are estimated to consume 10-15% of third party liability premiums and public expenditures on legal adjudication. These costs could represent a significant saving.

In any case, the add on no fault schemes in the US appear to be more efficient since they returned about 53.6% of each premium dollar to injured persons excluding money payable to their lawyers, while in the average pure tort state, the payout was only 43.2%[106].

5. Premium Costs

Trebilcock considered that some factors were not taken into account by Osborne in his costing of this model. In Trebilcock's view, based on the U.S. experience, the introduction of enhanced add on no fault benefits would lead to an increase in costs of coverage per automobile. The data from 1971-77 showed the premium increases doubled under this model from the pure tort states, while the difference was lower from 1976-83 with average premiums increasing at 40.75 compared to 35.3% in pure tort states. Of the states that had introduced such schemes since 1984 to 1991, 3 of the 4 experienced premium increases[107].

D. The New South Wales 10% Disability Threshold Model

In Australian state of New South Wales, the issue of a real no-fault scheme had been presented for consideration in 1984 and had been a goal desired by most of the polled motoring public in 1998. Nevertheless, the reform process in 1999 proceeded absent a requirement to undertake a detailed fault/no-fault debate and without proof that the premium level was intolerable to the motoring public or that the product would be cheaper through a single government supplier rather than through private-sector suppliers. New South Wales has never provided compulsory accident benefits.

It may be that the New South Wales reforms have reconciled the sound principles of insurance and tort law in the compulsory auto insurance context by reducing the recovery of non-pecuniary damages. Individuals do not normally choose to insure against non-pecuniary losses. The 1999 New South Wales experiment may prove that motorists and traffic injured themselves are notionally prepared to compromise the compensation principle in tort in exchange for more control over their recovery and rehabilitation destiny, a greater choice of effective rehabilitation strategies, and a reduction of the time and cost expense in attaining the same. New South Welshmen may well have judged it prudent to forgo the highest attainment of monetary compensation for pain and suffering in exchange for the option of pursuing the most effective recovery techniques available from service providers unconflicted by competing demands[108].

The Motor Accidents Authority of New South Wales indicated in 2002 that more than 70% of motorists have received a reduction of 25% of their premiums and that the scheme has achieved savings of $300 million (Au) per annum since the scheme was implemented in October, 1999[109]. There has been no scientific evaluation of this scheme to date in terms of the below listed criteria, but some brief comments are advanced as to the expectation of what the effects would be relative to pure tort and to pure no fault models.

1. Deterrence/Prevention

As this model has had no provision for compulsory no fault benefits it would be expected to share some of the deterrent advantages of a pure tort model. However with the increased threshold to 10% permanent partial disability, it would also be expected to share some of the deterrent disadvantages of threshold no fault models. The negligent driver's insurer bears less than the full cost of traffic injured losses because no lawsuit is launched for claims under the threshold, and the insurer pays nothing for pain and suffering awards. As insurer claims costs are reduced, the premiums for at fault drivers will be lower. This would reduce the premium cost and in turn, deterrence for risky drivers and risky driving activity.

2. Adequacy of Traffic Injured Coverage

As this model removes from the tort system more claimants whose claims for general damages compensation are disallowed, there is less coverage for traffic injured. However, under this scheme the changes were intended to eliminate overcompensation of those with less serious injuries and to provide more emphasis upon those traffic injured with the most serious injuries.

3. Cost internalization

Under the New South Wales tort system, the method of pricing was based on community rating until the 1999 reform. At that time, the Government decided to establish a risk pool for younger drivers who would otherwise have difficulty obtaining affordable insurance. For all other drivers, it introduced rating variables to promote effective risk rating including the use of factors such as age and gender. This model then is expected to reduce cross subsidization of high risk drivers by low risk drivers. As such this model as compared to its predecessor would increase cost internalization.

4. Operational Efficiency

Since under tort systems, the estimates of operating and claims adjustment costs represent about one quarter to one third of each automobile insurance premium dollar, the New South Wales model has likely decreased the operating and claims adjustment costs very significantly by establishing a 10% threshold for general damages claims and by instituting medical and dispute resolution panels to reduce the cost of disputation and litigation. The cost savings have been estimated at $300 million (Au) per year since the date of implementation in October, 1999.

5. Premium Costs

The model was estimated to reduce the average premium payable by motorists in New South Wales for compulsory third party liability by 25% or $100 from $400 for the majority of motorists. It is reported in 2003 that about 80% of motorists have received such reduced premiums.

E. The Threshold No Fault Model

Under a threshold model, no fault benefits are provided to all traffic injured but tort actions are permitted only above the "threshold" to allow more serious cases into court. Thresholds may be monetary or verbal. Under a monetary threshold, an injured person may be permitted to bring a tort action if the medical expenses exceed a certain amount. A verbal threshold contains a descriptive requirement such as "serious impairment of bodily function" or "serious and permanent impairment."

In the United States, 18 states adopted threshold no fault plans in the late 60s to mid-1970s, but no new plans were implemented thereafter. By 1987, two of those states had reverted to tort systems. The majority of the states had a combination of monetary and verbal thresholds[110].

The Osborne Report noted that a verbal threshold had the advantage of better defining the kind of injury for which a suit might be launched for non economic loss. However, words like "serious" and "permanent" were at times difficult to apply, individually, and more so in combination. It also noted a concern about additional costs associated with determining the application of the threshold.

The Osborne Report addressed the question of whether there was a principled rationale for allowing some injured access to court and excluding others. It noted that cost and political considerations, tort recovery might be seen as warranted for the most seriously injured in order to provide them with some means to obtain alternate sources of enjoyment of their lives in their diminished circumstances. The move was not just to contain rising premiums. There was a strong view that the less seriously injured were overcompensated. Some had argued that the access to the tort system for large damage claims in the United States were preserved to appease the powerful injury bar[111]. Apart from cost considerations, that tort recovery might be warranted for the most seriously injured to provide those with some means to obtain alternate sources of satisfaction due to the serious reduction in the enjoyment of their lives. On the other hand, the less seriously injured whose pain is transitory do not require non-pecuniary compensation[112]. However defensible the rationale for this model is, it is difficult to define an effective and workable threshold, for the following reasons:

- It requires certainty as to which claims are excluded, otherwise the transaction costs to determine inclusion on a case by case basis are likely to be excessive;
- The definition of the threshold should clearly reflect the percentage of cases desired to be included, and that percentage of cases desired to be excluded from the tort system because of cost considerations[113]; and
- Most importantly, it requires an effective cost balance between the restriction in access to tort and level of no fault accident benefits, since if few claims are excluded from tort action and the no fault accident benefits are generous, higher

premiums will result because the savings from reduced tort will not be sufficient to finance expanded no fault benefits.

There are other variations of threshold no fault systems which cannot be reviewed in detail here. Moreover, the current example of a Canadian threshold system, in Ontario, has gone through a number of incarnations since Bill 68 Ontario Motorists Protection Plan ("OMPP") was introduced in June 1990[114]. A rate freeze had been in place since 1987[115]. OMPP introduced a restrictive threshold that prohibited tort remedy below the threshold. The accident benefits were significantly enhanced. The implementation of OMPP caused an immediate and sizable drop in loss costs for insurers[116]. Personal injury claims, pure premiums and claim frequency dropped more than 25%. Rate levels stabilized for about 3 years. The upward trend in tort bodily injury loss costs was halted but the trend in no fault accident benefits escalated with the development of a burgeoning rehabilitation industry[117].

In January 1994 a weaker descriptive threshold was substituted; a $10,000 deductible on non-pecuniary damages and an award of $5000 for derivative claimants under the Family Law Act was introduced. There was no tort remedy available below the threshold. Above the threshold, there was a traditional tort remedy only for non pecuniary damages and none for economic losses. The increases in accident benefits were enhanced from the already more substantial OMPP increases. As a result, this product caused an immediate and sizable increase in losses and caused a large increase in personal injury pure premium.

While the trend in tort bodily injury loss costs remained modest, the trend in no fault accident benefits rose to unacceptably high levels. Rate levels increased in 1994 and 1995 and the rehabilitation industry continued to increase. It was replaced in November 1996 to a further revised threshold product[118].

That product introduced a $15,000 deductible for non pecuniary damages. It allowed a tort remedy for economic damages in excess of the collateral sources. It curtailed the no fault accident benefits and provided application on a largely second payer basis. After its implementation, average premiums dropped modestly. This model has recently been modified again through reforms that have been legislated but which do not come into effect until October, 2003. The deductible will be increased to $30,000. The evaluation discussed below relates to the OMPP model.

1. Deterrence/Prevention

The OMPP model expected to limit the right to sue to about 12% of traffic injured. While restricting the right to sue would suggest reduced effectiveness in deterring risky driving, there was little reliable data to determine if that was in fact so. It was expected that there would be a real increase in payment of no fault benefits and reduced premiums for negligent drivers than under tort models, fewer lawsuits, weakened precision of risk rating, and increased risk of socializing drivers to divorce risk taking from blameworthiness. On that basis, this model ranks lower than the tort models discussed above in achieving deterrence goals[119].

2. Adequacy of Traffic Injured Coverage

The OMPP model would compensate many more traffic injured than under a tort system because those who are at fault for their injuries or injured by causes other than another negligent motorist receive compensation. Some American studies estimated the increase in proportion of traffic injured compensated under similar models was about 7 percent[120]. On the test of adequacy of no fault benefits, the threshold model was superior to the tort model. However the threshold model bars from recovery a large number of traffic injured with moderate non-pecuniary general damages and high incomes whose claims fall below the threshold. As well, the then OMPP precluded claimants with psychological injuries.

3. Cost internalization

The OMPP model appears to shield more wrongdoers from consequences of their conduct and externalizes many accident costs beyond driving activity altogether by eliminating the rights of subrogation. As well, it removes many cases from the tort system.

4. Operational efficiency

Although the OMPP model removed many cases from the court system, it preserved the most expensive suits. There is no agreement on whether the litigation costs simply shift to the question of what cases can pass the threshold. Osborne doubted the administrative savings would be significant. Some data support that view, but other data showed encouraging results. For example, Michigan attained a reduction of 31.3% of lawsuits after implementing its threshold system and returned about 55.1% of the premium dollar to consumers. Verbal threshold systems were found to return about 47.8% of the premium dollar. It was thought that the OMPP model would be more efficient in delivery of benefits. Because it resolved a high percentage of cases on a no fault basis, the OMPP model was considered very effective in attaining operational efficiency[121].

5. Premium Costs

It was expected that the OMPP model would largely exclude non-pecuniary damages from coverage, and that administrative costs would likely be reduced. Savings were initially predicted in the range of 22-35%[122]. However the OMPP model was subsequently replaced by other versions and it is not evident that savings in those ranges have been achieved from that date to the present.

F. The Choice Model

This model in theory permits the prospective driver injurer or prospective traffic injured person a choice between offering or obtaining speedy compensation for economic and medical costs on a no fault basis and waiving the right to tort claims, or waiving the no fault benefits and pursuing tort claims for the full measure of damages. If two people with no fault insurance collide with each other, each seeks recovery for the losses from his or her own insurer. If two people with third party coverage collide, they would proceed just as they do under a tort system. If a person with no fault insurance collides with someone who has third party insurance, the first person claims losses from his or her insurer and is not liable for the other persons losses even if the first person was negligent. The second person has a tort claim against his own insurer if negligence on the part of the first driver could be proven. This claim would be much like tort claims against uninsured motorists.

Some commentators consider that the choice by consumers might be influenced by cost, such that low income and elderly consumers might choose the no fault option because they are insuring lower than average prospective income losses. This may explain the fact that while Kentucky introduced a choice model in the 1970s, it has become a *defacto* no fault state. It was also thought that high risk drivers and drivers of heavy vehicles, who cause disproportionate injuries to third parties relative to themselves, might prefer the no fault option to insulate them from liability and coverage costs to negligently injured third parties.

In the KPMG Report the opinion was expressed[123] that choice models are fraught with administrative difficulties and questions, in cases for example, where the traffic injured never had the chance to make a choice, such as pedestrians, occupants of vehicles or dependants of non automobile owners. Another difficulty is the method by which to appropriately allocate costs when an accident occurs between a tort policyholder and a no fault policyholder. This report says on balance, these systems have not been effective in health treatment or cost control[124].

New Jersey and Pennsylvania implemented choice programs in 1989 and 1990. Prior to the choice, New Jersey had a no fault model whereas Pennsylvania had a tort model. Their choice models were very similar. Each state provided the choice of a full tort option or a limited tort option. In New Jersey, a motorist who chooses the limited tort option has legal recourse against another motorist for non-economic damages only if one of the statutory serious injuries is sustained. In either case, motorists are allowed to sue for economic damages above the limits of their minimum statutory coverage which in New Jersey is $15,000. In Pennsylvania, motorists who choose the limited tort option are limited in their right to sue for non-economic damages unless one of the following circumstances occurs: (1) the accident causes serious injury, i.e., exceeds the verbal threshold, or (2) the injuries are caused by another driver who was convicted of drunk driving, who was uninsured, or who was insured in another state.

One very recent study[125] of these choice models on outcomes such as less attorney usage, speedier time to payment, and more consistent (equity) payments found higher insurance costs, in New Jersey, and in Pennsylvania. This result was expected in the case of New Jersey which had previously had a no fault scheme, but unexpected in the case of Pennsylvania, which switched from tort to choice. Further, the study's analysis of tort versus no-fault selectors post-choice in New Jersey and Pennsylvania did not reveal clear evidence of no-fault's lower administrative costs and speedier, more consistent payments in these jurisdictions.

Another study however[126] showed that between 1990 and 1998 auto insurance premiums in Pennsylvania declined after about 44% of the insured population of the state had chosen the limited tort option. It appeared the factors that lead to the election of limited tort include price savings, household income, greater traffic density and political party preference. It was found that males and households with increasing income are more likely to choose limited tort whereas increases in traffic density and attorney influence leads to more full tort choice.

In the Canadian province of Saskatchewan a choice model was implemented effective January 2003. Previous to this date, Saskatchewan had a modified no fault model that was mainly a pure no fault scheme with a restricted tort component for provable economic loss beyond the provisions of the statutory scheme.

1. Deterrence/Prevention

Commentators have argued that this model is subject to adverse selection problems. It is expected that high risk drivers would elect the no fault option which would result in lower premiums and fewer incentives to avoid dangerous conduct. As well, the more high risk drivers elect the no fault option, the higher will be the premiums payable by those drivers who elect tort coverage. Further, the latter will have to sue their own insurers for claims and pay premiums that reflect the cost of such claims. Thus drivers who elect the no fault option will externalize some accident costs to drivers who elect the tort option. This effect is thought to cause increasing divergence of average premiums between the two options. This effect in turn is thought to cause tort drivers to switch to the no fault pool which will convert the system to a pure no fault model. The experiences in the United States demonstrate that with modification of the choices to those of full tort and limited tort, the dramatic extremes of the choices are muted. It may be too early to determine the effects of deterrence and prevention under this model.

2. Adequacy of Traffic Injured Coverage

The number of persons who will receive compensation and the adequacy of same depends on the numbers of drivers who elect each option. While under the no fault branch of the theoretical scheme, the benefits are generous, nevertheless the right to recover non-pecuniary general damages is eliminated. In the earlier US models, the tort option did not offer any no fault accident benefits. Thus if fault could not be proven against the other driver, the insured who had chosen the tort option would receive nothing from the scheme. Conversely the motorist who had chosen the no-fault option would be required to forego benefits if he already had private accident or disability insurance. More recently, hybrid models have engaged to address these shortcomings.

3. Cost internalization

The choice model may largely relieve negligent drivers of financial responsibility for accident costs imposed on innocent traffic injured. If extensive risk rating is retained as a feature under both options, then some accident costs will be internalized to high risk drivers. If it does not do so, and eliminates collateral benefits recovery and subrogation for hospital claims, it will externalize some costs to sources unrelated to driving activity[127]. This model is not considered to rank highly on this criterion.

4. Operational efficiency

The extent of operational efficiency of the choice model depends what proportion of drivers fall under each option. It is considered that it would probably conserve administrative costs and resolve claims more expeditiously on the whole than a tort model. If most drivers elected the no fault option and those electing tort dealt with their own insurers it would be quite successful in attaining operational efficiency. If the trend evolves in accordance with the US experience, it would appear to be the case that the goal of operational efficiency is only partially achieved.

5. Premium Costs

Much depends upon the percentage of consumers electing each option. If many elected the no fault option, there would be savings in administrative costs. There might well also be savings under the tort option with the feature of claimants seeking recovery from their own insurer. On the assumption that most claimants elect the no fault option, there would be administrative savings since those that elect tort would not pay for no fault benefits parties.

Yeh and Schmit found attorney involvement increased post-choice in New Jersey but there was no decrease in attorney involvement as expected after choice in Pennsylvania. Results showed longer settlement duration in New Jersey which was expected but also in Pennsylvania after choice which was unexpected. Results of variability in payment for economic loss was found to have increased in New Jersey as expected, but also in Pennsylvania which was unexpected[128].

G. The Pure No Fault Model

1. Deterrence/Prevention

The pure no fault model is considered to reduce the effectiveness of deterrence because there is no third party liability insurance for bodily injury and no mechanism for fault determination in traffic accidents. Flat rating or uniform cost of insurance to all drivers is considered to undermine the deterrence principle. However it is difficult to read the data as clearly demonstrating that the increase in accidents following introduction to pure no fault schemes is due to the no fault principle, or due to the flat premium structure or due to enforcement of compulsory insurance which brings previously uninsured drivers into the system[129].

Two studies were conducted in Québec after the pure no fault model was introduced to determine whether accident rates increased after its introduction[130]. Both found that increases did occur but gave different explanations for the effect. Gaudry[131] attributed the effects partly to more stringent enforcement of compulsory insurance, leading previously uninsured drivers to drive with less care, and partly to the adoption of the flat-rate premium structure. Thus, it is the insurance regime, rather than the liability that he thought caused increase in accidents. Despite similar empirical findings, Devlin attributed increases in automobile fatalities directly to the abolition of civil suits for negligent driving[132].

A New Zealand study of its pure no fault system (which had a flat rating premium structure until 1982) reported no important increases in motoring activity or accident rates[133]. However, Trebilcock thought the findings were of limited value due to influence of other factors. In a more rigorous study of fatal accidents in New Zealand and Australia, it was reported that comprehensive no fault schemes experienced 16% increase in automobile fatalities. However the author himself expressed concerns about systemic change in driver behavior.[134].

The Trebilcock Report considered it problematic to attempt to attribute lower average driving care to the abolition of tort liability, as opposed to changes in the structure of insurance premiums. The Osborne Report concluded there was no credible evidence to suggest that eliminating tort law and substituting no fault would decrease accident frequency or that tort liability exerts any measurable effect on the level of safe driving. What remains unknown is whether deterrence would be effectively achieved if extensive risk rating were a feature of a pure no fault scheme. This model is the least effective at achieving deterrence because the incentives to avoid injury to oneself is weakened and the premiums do not reflect the costs inflicted on others.

2. Adequacy of Traffic Injured Coverage

Although a pure no fault regime bars a number of accident traffic injured from compensation through the tort system which a threshold system would not, it would not deprive any claimants of no fault compensation. In Québec, it is estimated that after the introduction of pure no fault, the proportion of traffic injured receiving any compensation increased by about 20%[135]. The 20% increase over Québec's former fault-based system was much larger than the 7% superiority of U.S. states that have threshold regimes over those that have tort regimes[136].

The pure no fault system was less effective than a threshold model in terms of the extent of traffic injured coverage. The no fault benefits for the compensation of economic losses in the two systems are comparable, however, in those cases that would have cleared the threshold scheme, compensation for loss of income is lower in Québec for high income earners.

The systems are similar with respect to the degree of compensation for non-pecuniary losses. In the then Ontario system, non-pecuniary loss compensation may result in cases of death, permanent serious disfigurement, or permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature.

In Québec, a lump sum of $75,000 ($100,000 in 1991 and $125,000 in 1992) was payable for permanent after effects of injury, but this compensation for non-pecuniary loss is less than the maximum tort award, which is (now) $292,000. In Québec, compensation for non-pecuniary loss is not available in the case of death as it was in Ontario through the tort system. However, this difference is mitigated by the fact that the scheduled death benefits were much higher in Québec.

By the criterion of extent of compensation, the pure no fault model is superior to the tort system because traffic injured entirely or partially at fault have no or reduced compensation based on the extent of their contributory negligence. As well, there is little uncertainty under a pure no fault scheme as to who gets what and when and accordingly the benefits are delivered to the traffic injured with very little delay. While it covers nearly all traffic injured, it severely restricts claims for pecuniary losses and does not cover residual economic losses[137].

3. Cost Internalization

The pure no fault system does away entirely with the notion of fault for injuries and fatalities[138]. If its premiums are uniform for given classes of vehicles, which means that there is no risk-rating whatever within the system, then it is much inferior to the 1990 OMPP system in terms of the internalization of the costs of high-risk driving to high-risk drivers[139].

4. Operational Efficiencies

Since there are fewer lawsuits in pure no fault regimes than under the threshold model and the largest and most expensive lawsuits are also eliminated, administrative costs are lower in pure no-fault. Claimants' legal expenses, which are estimated to consume 10 to 15% of liability premiums in the jurisdictions, will be lower, as will public expenditures on legal adjudication. Even without the saving of public expenditures on trials, the data according to a U.S. department of transportation study show that, the payout/pay-in ratio for verbal threshold states was 47.8%, and in Michigan 55.1%. These figures appear low compared to the ratio of 67% for the pure no-fault plan in Québec (1979-84).[140] However, in Québec the ratio of net compensation to premiums paid (at 58%) was higher than Michigan even under the former minimal no fault regime. Devlin concluded that the elimination of the fault-based civil liability regime in Québec generated administrative savings of about 10%.

The Osborne Report argued that only claims adjustment costs (defence legal costs plus adjusters' costs) would be reduced with the introduction of no-fault. It found no reason to assume the insurers' administrative infrastructure would shrink if the compensation were to change as long as insurance is sold on an individual basis. He thus estimated a reduction of no more than 5% for a regime change from minimal no fault to pure no fault[141]. The reduction for a regime change from threshold to pure no fault would be even smaller[142], but a pure no fault regime is conceded to have some administrative cost saving over a threshold no fault regime.

Under a pure no fault scheme, the speed of initiation of flow of payments should be an improvement over threshold regimes, because in a pure no fault system there is no delay of payment due to lawsuits. The Trebilcock Report found impressive the reduction in payment flow delays in pure no-fault relative to minimal no fault[143].

It is noted that no fault or threshold no fault models produce lower process and transaction costs than tort models because there is no or much reduced formal process and no or much reduced need for disputing lawyers, health professionals and other experts, unless the benefit structure has allowed for too complex an administrative procedure[144].

5. Premium Costs

Devlin compared premium levels in the Québec system and Québec's former civil law system[145]. The Trebilcock Report noted that the estimates for the then Ontario threshold regime were to reduce premiums by 22-35% from the previous regime. It was seen that low risk drivers would pay much higher premiums and high risk drivers would pay very much lower premiums in Québec relative to the then OMPP system. However even after the increases to non-pecuniary general damages awards by legislation in Québec after 1989, the premium levels did not rise. The lowest premium levels of all models considered are found under the pure no fault model. For this reason and the administrative savings expected, this model ranks first in attainment of low premium costs.

VI. CONCLUSIONS ABOUT COMPENSATION MODELS

1. Deterrence /prevention

While debate remains as to whether tort systems have any real capacity to deter bad driving conduct and that criminal sanctions and experience rating are better tools to achieve deterrence, The Osborne and AAIB Reports concluded that the tort system does have some effect on accident prevention and as such, tort models best attains the goal of deterrence, best attributes the costs of traffic accidents to wrongdoers. They also agreed that effective experience risk rating can help attain deterrence.

2. Extent and Adequacy of Traffic Injured Coverage

The Trebilcock Report concluded that the enhanced no fault system best provided compensation and expedition of compensation to most traffic injured.

3. Cost Internalization

The Trebilcock Report concluded that the tort modes best achieved cost internalization by allocating accident costs to wrongdoers and by denying recovery to at fault traffic injured.

4. Operational efficiency

The Trebilcock Report concluded the pure no fault model best attained the goal of operational efficiency by delivering compensation to traffic injured at a lower administrative cost and in a more timely fashion than other models.

5. Premium Costs

The AAIB Report concluded the pure no fault model best attained the goal of lowest premium costs by eliminating recovery of pecuniary general damages and by the administrative structure[146].

The Trebilcock Report consolidated the evaluations of the options under the five criteria into a matrix as depicted in **Graph 7**. The ranking was based on a scale of 1 to 5 with 1 as the highest rank. It was noted that the ultimate policy choices are unavoidably social and political in that normative weights must be attached to competing evaluative criteria which reflect competing perspectives on the goals of accident law. It should however advance the public understanding of the choices and trade-offs that must be confronted.

PART THREE: PUBLIC SUPPLIER MODELS

VII. THE AUSTRALIA EXPERIENCE OF PUBLIC MODELS

For reference purposes, a comparative table in **Graph 8** shows for each Australian state in 2001, the regulator, the number of underwriters, the type of compulsory auto insurance scheme, the number of vehicles, method of premium collection, method of premium setting, total earned premium and number of claims[147]. **Graph 9a and 9b** display the benefits and compensation models across Australia.

Under Australian constitutional arrangements, responsibility for compulsory auto insurance for personal injury rests with the State and Territory governments. By and large, auto personal injury insurance became mandatory in Australia during the 1930's and 1940's.

Initially, most state governments owned an insurance company which competed with private sector insurers. The exceptions were Western Australia ("WA") and South Australia ("SA") which had monopoly underwriting control of the compulsory auto insurance product. However all state governments except the Northern Territory have since sold their insurance offices. The private insurer, Insurance Australia Group owns the former government insurance offices in WA and SA. Suncorp Metway owns GIO in Queensland, New South Wales, Victoria and Tasmania[148].

The experience of the states of New South Wales, Queensland and Victoria are given in greater detail in this report as their experience and study of auto insurance scheme modification has been extensive.

A. New South Wales

1. Background

Automobile insurance was introduced initially through the Motor Vehicle (Third Party Insurance) Act 1942. The courts determined the calculation of damages with little or no legislative intervention. Gradually bodily injury loss costs increased. When calls by insurers for higher premium levels went unanswered, insurers gradually withdrew from the market. The Government assumed the underwriting of the scheme through its Government Insurance Office ("GIO") in 1984, following the withdrawal of the last remaining private insurer. The Government then proceeded to legislate scheme changes including premium structure and the process of calculating damages. From 1984 until 1988 further changes were implemented such as increasing the discount rate, limiting payment for voluntary services and removing judgment interest on general damages. However costs continued to rise which led to the introduction of the Transport Accidents Compensation Act, 1987 known as the Transcover Scheme[149].

The Transcover Scheme retained the fault based feature but replaced tort legal proceedings with a statute based administrative scheme. The statute vested the GIO with the responsibility to determine benefits under the legislation, subject to rights to appeal to a Medical Review Panel or the District Court, to undertake claims administration and advice, to deliver benefits speedily, to provide rehabilitation to traffic injured and to establish liaisons with medical and hospital providers. It was responsible to manage the appeal process, pay the provider for hospital, dental, medical, nursing, ambulance, physical and occupational therapy and other statutory services.

While claims experience showed that fatalities and injuries were declining in absolute numbers and relative to the motoring public, compensation claims were increasing and thus the ratio of claims to injuries and fatalities was increasing. The new Government, elected in 1987, also had committed to restore some form of common law damages, and struck the Transcover Review Committee to examine further possibilities for reform[150].

In 1988, the Transcover Review Committee examined 5 options to reform the benefits compensation portion of the scheme. The Committee decided that a private enterprise supply scheme with the application of traditional insurance principles for automobile insurance compensation, was the preferred option. Its primary features included the following:

- Multiple insurers (more than 5) underwriting on a commercial risk basis;
- A disability threshold and deductible of $15,000 reducing to nil depending on the seriousness of the injury;
- Hospital and medical costs paid on a cost incurred basis in long term disability cases;
- Discount rate of 6% for impairment of earning capacity when future losses are taken as lump sum;
- A cap on general damages of $180,000 in most severe cases and a verbal formula to require proportionate reduction in other cases;
- No recovery for gratuitously provided domestic and nursing care for first 6 months nor for first 5 hours per week;
- No interest on past loss except as penalty on insurer;
- Deduction of amounts recovered from other sources;
- Independent assessment of disputed claims;
- Offers of payment to be treated as payments into court;
- Early determination of liability without commencement of court proceedings;
- 6 month freeze on commencement of proceedings to encourage direct negotiation with insurer;
- Dollar sums to be expressed as a multiple of average weekly earnings and indexed accordingly[151].

The expectation was that with effective control of damage awards, private enterprise competition would see premiums regulated in the market place. This model was introduced through the Motor Accidents Act, 1988 ("The Privatized Scheme"), with a new government agency, the Motor Accidents Authority formed to act as the regulatory body for this type of insurance.

The Privatized Scheme abolished Transcover and the government monopoly. The Privatized Scheme made motor vehicle registration conditional upon taking out third party insurance, determined the contents of the policy and restricted the insurer's ability to cancel or impose conditions on the policy. Tort based principles for assessing damages were restored with some modifications. The changes to the substantive tort law were designed to regulate procedures and payments rather than to regulate premiums.

The operation of the Privatized Scheme was made retrospective to the commencement of the Transcover Scheme for injuries between 1 July 1987 and 30 June 1989 if no Transcover claim had been advanced in that time. If Transcover benefits had been received in that interval, additional compensation could be sought. In each such case, GIO would assess the claim according to the new scheme claim rules and where appropriate, pay damages from the former Fund[152]. However, the Privatized Scheme saw periodic legislative reforms from 1995 to 1998.

Between 1994-5, there was an increase of 10% in court claims throughout Australia. A larger increase by 17% occurred in New South Wales between 1994-5 and 1996-7. Further, the claiming rate had increased since the first five years of the Privatized Scheme. In response to rising premium rates and a concern about the stability of the scheme, more reforms were introduced to reduce the cost of small claims by replacing the monetary threshold for general. In late 1995, a package of major reforms was introduced to contain rising claims costs by replacing a monetary threshold with a verbal threshold for general damages. In 1998, the Government introduced further legislative reforms to limit legal costs in auto accident cases and other measures to reduce premiums and promote early resolution of claims[153]. A number of studies were undertaken to assess the underlying cause of the problems[154].

Despite the fact that New South Wales has remained a private enterprise insurance supplier system, in a 1998 report[155], the Ernst & Young Report provided some costing of the effect of changing to a government monopoly scheme. It calculated that the removal of profit margin charged by insurers would reduce a current average premium at 30 June 1998 of $450 by $ 25 and the reduction in acquisition costs incurred by $35. However it did not include any calculation for the start up costs of establishing a government monopoly model[156]. At the end of 1998, the MAA decided to investigate consensus for change to the Privatized Scheme which resulted in the creation of a working party whose recommendations led to the enactment of the *Motor Accidents Compensation Act*, 1999 ("The NSW model") in 1999[157].

2. The New South Wales Model

The reforms under the 1999 New South Wales model are summarized as follows. The existing system of community premium rating was retained but would now allow use of rating factors of age, gender, driving record, type, age, and engine size and safety features of the vehicle. The focus was away from simply paying compensation for injuries and towards providing better, earlier treatment. The new law streamlined the medical treatment process by introducing standardized medical treatment, a medical panel to provide determination of medical treatment and binding assessments of permanent impairment. A dispute resolution panel would determine all remaining issues relating to work capacity and economic losses, which decisions would be binding on the insurer. The injured person would have a right to appeal the decision to the court subject to a risk of a legal costs penalty if unsuccessful. Some savings were estimated to occur through streamlined claims handling and reduction of legal costs and insurer profits. The major change was the introduction of an objective assessment of impairment as a gateway for economic loss. To produce the necessary reduction in cost to the scheme, no damages were payable for non-pecuniary general damages unless the injured person had more than 10 percent permanent impairment, as defined by the American Medical Association guidelines. Further refinements were added, such as a prohibition against claims for economic loss for the first five days of loss of earnings and a cap on the loss of net weekly earnings at A$2,500. There were also reforms to fix the maximum for legal and medical fees, including restrictions for advertising[158].

B. Queensland

In Queensland auto insurance was delivered through the private sector when a scheme was first introduced in 1936. It provided motor vehicle owners with unlimited liability for personal injury caused by, through, or in connection with the use of an insurer motor vehicle anywhere in Australia. It had a history of a large number of participants until the early 1970s when most insurers withdrew from the scheme after it became unprofitable. From this juncture, the scheme was operated as a duopoly with one private sector underwriter and the then State Government Insurance Office ("SGIO") up to 1988. The duopoly remained until SGIO was sold (and then became privately owned as Suncorp Metway). At the time of the sale of SGIO to Suncorp Metway, other competitors were permitted to enter the market. At present, there are six licensed insurers.

A Review Committee was appointed by the Treasurer in April of 1999 to examine the third party liability insurance scheme in the State of Queensland. Included in its review was an examination of the option of converting to a public monopoly. It was noted that the submissions to the Committee presented during public hearings showed strong support for the ongoing involvement of private insurers. The Committee considered an advantage of private sector underwriting of the scheme was the removal of risk from the Government, subject to its status of insurer of last resort if an insurer became insolvent. Other advantages noted include:

- Commercial management;
- Acceptance of financial risk;
- Price competition if the scheme allows; and
- The opportunity to benchmark performance.

The advantages of government monopolies were reported to include:

- Greater capacity to smooth premium adjustments;
- Consistency of claims management;
- Lower acquisition costs;
- Closer attention to long term care and scheme policy issues;
- Removal of database duplication and provision of consistency in data quality;
- Control of provider fees;

- May provide savings in premiums to motor vehicle owners over which are capable of being sustained over time.

The potential disadvantages to government monopolies were reported as follows:

- Greater government involvement in premium setting which may have consequences for funding;
- Scheme funding and operational risks moved to Government;
- Director operational impact of loss of revenue and profitability of insurers;
- The need to meet government return criteria;
- A move to government monopoly would move further from competition and deny the positive history of the scheme which had to that time been thought to be advantageous[159]; and
- Some of the benefits of a reduced premium may be eroded over time due to lack of competitive forces.

After consideration of all factors, the Committee indicated that a state run monopoly would deliver an average premium of $262 which was $36 lower than the then existing model. This calculation of savings was attributed to lower policy and acquisition costs. However the Committee warned that the reduced premiums would come at a cost of assumption of the scheme operating risk and other risks by the state. In the end, the Committee did not recommend a move toward the government monopoly supply model because it would involve the assumption of scheme risks by the state, a move away from competition and a substantial adverse impact on the insurers and as a consequence on the Queensland economy[160].

In 2000 the HIH Group, a major Australian insurer, and its Queensland CTP (compulsory third party) licensed subsidiary, FAI General Insurance collapsed but due to the insurance risks of the Queensland business some $400 million of liabilities had to be transferred to the State through the Nominal Defendant. A review of the structure of the scheme was undertaken to investigate means to guarantee assumption of the liabilities. As a result of that occurrence, the Queensland regulator MAIC is proposing insurers be required to write compulsory third party automobile insurance in a separate insurance company constituted solely for this purpose.

C. Victoria

1. Background

The Australian state of Victoria has a population of 4.8 million and 3.37 million vehicles all of which are insured by the Transport Accident Commission ("TAC"), which is the monopoly compulsory government third party insurer. Seventy percent of the population resides in the state capital of Melbourne. Private insurers have had no role in the Victorian scheme for more than 25 years, when the last private insurer ceased underwriting compulsory-third party liability and left the State Insurance Office (SIO) as the only insurer. The TAC scheme has no property damage component.

The Motor Accidents Board (MAB) first introduced no fault insurance to Victoria in 1974. The Compulsory Third Party Division of the State Insurance Office (SIO) operated a limited no-fault and standard third party compensation scheme until 1987.

The TAC was established in 1986 pursuant to the Transport Accident Act to administer a compensation plan which was restricted by a combination of descriptive and monetary thresholds to the dependants of the fatally injured and those suffering permanent impairment of 30% or more or a serious injury as defined under the Transport Act[161]. The MAB was amalgamated with SIO to form the TAC scheme. The TAC assumed all relevant MAB and SIO liabilities.

At the time of the amalgamation, the existing scheme was in a deficit position of more than $1 billion of unfunded liability[162]. As the unfunded liability became funded, the premiums were not reduced but remained the same until the trend in pure premium caught up to the 1987 premium level. It was eliminated in 1990 through successful case and risk management and excellent investment performance[163].

2. Initial Reserves

The Government did not put any capital into the TAC scheme when it was established. Although the old scheme was in deficit, it was planned that the new scheme would become fully funded over a 10 year period. As it turned out this was achieved in a much shorter time frame. Regular premium income was sufficient to meet the cash flow requirements of the new scheme because the initial TAC premium level was set higher than that estimated to meet claims costs with the view that the excess premium would eliminate the deficit.

One key lesson TAC learned was to ensure the premium is set at adequate levels initially as consumers find it very unpalatable to subsequently increase premium above the level of the consumer price index.

3. Start-Up Costs

Because the TAC was an amalgamation of MAB and SIO it was not a true start-up. As such, TAC indicated "amalgamation" cost data would be difficult to interpret, somewhat dated and difficult to correlate to a Canadian context.

4. Technology

When TAC commenced its operation, it assumed control of the existing MAB payment and claims management systems. Over the years, it developed and enhanced systems to support effective claims management as they aged. It is currently undertaking a major technology upgrade.

A model similar to TAC would require a centralized rules-based payment system for no-fault benefits and would likely require an electronic claim file/workflow management system that might be purchasable from a workers compensation scheme.

5. Adjustment of service provider relationships during transition

The relationship of health and other professionals with the TAC scheme changed gradually over time from those in place with MAB.

6. Purpose and Function

The TAC provides no-fault benefits, limited tort rights for the seriously injured, manages the long tail scheme and invests in accident prevention and trauma research to contain claim costs.

7. Financial Dimensions and Service Delivery

The TAC reports it holds $A5.57 billion in total assets and has $A4.88 billion in total liabilities. It received 21,361 new claims in 2001-2002.

8. Staffing and Organizational Structure

The TAC approach to claims management is built on the concept of "segmentation by injury" and "management by exception". Claims are managed in teams based on the type and severity of injury. Management by exception is a process involving a payment system with service limits set by type of injury which automatically processes the majority of payments. Claims management interventions occur when circumstances suggest proactive communication will make effect a better outcome, (outbound cabling re returning to work) or when claims exceed expected levels of service, time or cost.

TAC runs four claims divisions, Low risk, Recovery support, Major injury and Common law and appeals/TAC Law.

Low Risk - handles claims with minor injuries expected to be minimal cost and require little or no claims management intervention with the primary focus on efficient processing.

Recovery Support - handles moderately injured claims requiring rehabilitation. These claims are subdivided into soft tissue, orthopaedic and "long hospital" and then further segmented to increase return-to-work focus into vocational claims which concern claimants who were employed at the time of the accident ("vocational") versus those who were not.

Major Injury - handles the most severe claims including spinal cord injuries, head injuries, burns and amputees with the focus upon 'lifetime support".

TAC reports that it processes 500,000 accounts per year. In 2001/2 it made claims payments of $A534 million. Management intervention differs for each team portfolio by reason of the differing intensity of claims and team portfolio sizes as **Graph 10** illustrates.

9. Product Model and Claims Data

There do not appear to be any comprehensive comparative studies of TAC with any other public automobile systems inside or outside of Australia. Further, there do not appear to be any studies comparing the TAC scheme with any similar insurance delivery monopoly models such as workers compensation schemes with various forms of outsourced claims management.

TAC's total revenues amount to $190 million per annum, which makes it a modest participant in Victoria's $12 billion health care market. It notes that growth in its hospital and medical costs continue to grow above CPI, whereas TAC premiums are tied to CPI.

TAC's litigation management policy has some similarity to the threshold no fault model as it has both components. **Graph 11** depicts the requirement to gain access to the tort system. Its experience with lifetime support liabilities is illuminating. It reports that these liabilities are driven by less than 2% of cases. These liabilities relate to 700 claimants whose liabilities amount to $1.4 billion, have doubled over a three year period but TAC has found that increased expenditure on care has not translated into better outcomes.

TAC currently employs about 625 people.

Under TAC access to a claim in tort requires passing through three gateways. First, the claimant must establish an impairment of 30 percent or higher. Then it must meet a verbal threshold. If it does not satisfy TAC it has met the threshold, it may appeal to the court for a ruling on whether the claim passes the threshold. Once it receives a serious injury certificate by TAC or the court, it must prove fault and a minimum of $38,290 per head of damage for pecuniary loss and pain and suffering. The Damages are capped as follows:

Pecuniary loss - $A 861,660
Pain and suffering - $382,950
Wrongs Act - $627,250

Of the 18,000 claims it receives each case, the type of injury is categorized as follows:

Minor injury - Casualty visit outpatient and GP treatment - 81%
Moderate injury - Soft tissue, fractures hospitalised - 15%
Major injury - spinal injuries, brain injuries and fatal claims - 4%

The distribution of liabilities is quite different.

Minor injury - 0.1%
Moderate injury - 13%
Major injury - 54%
Tort claims - 33%

In each accident year, it reports that between 600 and 700 claims access the tort system.

TAC has an investment strategy which states its objective is to achieve a 5% real return.

TAC has a sophisticated approach to accident prevention involving advertising, sponsorships and cooperative enforcement initiatives and has produced impressive results in accident reduction[164].

The trends suggest costs of recovery and rehabilitation and wages were outstripping historical cost projections. The upward pressure on costs is mainly in the area of health care. There are no restrictions on what health professionals may charge to patients and few controls on health care costs and cost of caring for catastrophic injuries is greater than anticipated.

VIII. DETAILED REVIEW OF PUBLIC MODELS IN CANADA

Decisions by provincial governments to take over the private automobile insurance business have occurred as a result of significant public discontent over increasing premium levels. The government operations typically do not pay income taxes. There was no compensation to private insurers for the loss of their business. All the public systems have had more than one source of revenue which may or may not affect the visibility of rate increases. Government run plans have no immunity from escalating judgments. Paradoxically statistics for public insurers are not as readily available as for private insurers because public or regulatory reporting on their operations is not required.

In the beginning, the right to sue remained in all the western provinces, and specific no fault benefits that were deducted from tort recovery were legislated. Collision coverage was mandatory.

A detailed account of the features of each public model in Canada from west to east is set out below.

A. British Columbia

1. The Wooton Report

The Government of British Columbia appointed a Royal Commission on Automobile Insurance of January 25, 1966 in response to public discontent over the rapidly increasing costs of automobile insurance. Its tasks[165] included investigation and determination of:

- the costs and delays in compensation to traffic injured;
- whether compensation was adequate under the current tort process;
- whether the cost of automobile insurance to insurers, to motorists and to the public generally was in proper relationship to effect the protection;
- whether recent variations in automobile insurance premium rates were justified;
- whether the public would be better served by the existing scheme for accident compensation and insurance coverage or by a no fault model;
- whether the compensation should be delivered privately or by a government department or agency or a combination thereof; and
- the most effective method and procedures in the introduction of change if recommended.

The Commission findings were reported on July 30, 1968 following an exhaustive investigation of the model in the province including oral testimony from legal scholars and industry experts about other schemes in other jurisdictions.

The Commission recommended:

- implementation of a basic no fault system;
- compulsory basic insurance;
- the insurer attach to the driver rather than the owner;
- voluntary extended insurance beyond the basic policy;
- application of the plan to commercial vehicles;
- creation of an automobile insurance board and redefinition of duties of the Superintendent.

The Commission reported dissatisfaction with tort system, the costs of automobile insurance, the delays caused by litigating claims, lack of compensation to those who suffer serious injury although they are at fault and by the failure of the auto insurance industry to correct the inequities of the system. It concluded that adjusting costs were too high and that:

> ***"By a simplification of the fault principle or by deciding fault early or even by the elimination of fault altogether, as recommended...time factors involved in making and receiving compensation may be reduced."***[166]

The Commission found that the system discriminated against those suffering bodily injury and the more serious the injury, the more discriminatory the system. It concluded:

- the system was unnecessarily expensive to administer with $1.60 to pay out $1 in settlement; and
- the time lag from accident to payment was unnecessarily long; and
- the cost to claimants unnecessarily large.

It concluded

> ***"..without doubt the sizable sums presently being spent to provide protection do not represent an effective, much less optimum use of such monies."***

The Commission considered many texts and articles which analyzed the disadvantages of the tort system including the delays, non compensation of at fault traffic injured and capriciousness of juries, among other weaknesses. It received evidence from Professor Linden (as he then was) of

Osgoode Hall but sensed that even he seemed to express doubt over the defence of the current tort system. The Commissioners described their conclusion:

> ***"...in light of all the evidence, and after the submissions made, is that the fault system cannot adequately protect the general public insofar as the automobile accident is concerned. (The Commissioners) are firmly convinced that by a system of no-fault cover aided by other factors the motorist and the general public would be better served."***[167]

2. History

ICBC was formed in late 1973. It initially wrote all lines of business. At that time, collision was included in the mandatory coverage with deductibles as low as $50 or $100.

The task of forming the company and transforming the systems and melding the people from many different insurers was formidable, as were the issues of what level of premium was to be charged and what statistical information was available to determine claims costs. It had the option of adjusting rates periodically based upon claims experience but instead paid dividends to consumers. That choice may have accounted for some unpredictable consumer behavior.

Between 1975 and 1976, ICBC received funding from the Provincial government in the range of $182 million. In 1976, ICBC separated property damage coverages from compulsory insurance and provided them to free market competition, although ICBC still dominates this market. When the premiums collected exceeded the amounts required to pay claims, ICBC subsequently paid over $250 million in dividends to its customers, the citizens of the province. A few years after the date of implementation of the scheme, that practice changed to one of setting premiums based on claims experience.

In 1982 there was a major enhancement to accident benefits following recommendation of Automobile Accident Compensation Committee. In 1985 all lines except automobile were sold to a private interests. In 1997, ICBC merged with the Motor Vehicle Branch and assumed responsibility for nearly all driver and vehicle-related services.

3. Current Program

ICBC is a non profit provincial Crown Corporation with a current mandate to operate on a break even basis. Its head office is in North Vancouver and its claims centers are located throughout the province. It markets solely through the broker force by virtue of an accord which prohibits ICBC from direct selling. It employs independent adjusters. It has no ownership in any delivery of health or property damage services. The current population of British Columbia is over 4.1 million. The number of insured private passenger vehicles in the province is about 2,705,000.

At present, ICBC provides Universal Compulsory Automobile Insurance ("Basic Insurance") which coverage is mandatory for all registered vehicle owners who required insurance for any licensed vehicle in British Columbia. Its main function is to administer Autoplan according to the *Insurance (Motor Vehicle) Act* and its regulations. It also competes with private insurers for business in optional, extension and special coverages.

ICBC collects and invests insurance premiums to provide benefits for policy holders and traffic injured.

All of these activities are conducted with 100% of the revenue flowing to the provincial government general revenue.

The Autoplan provides accident benefits for which there are some exclusions[168]. It also provides Underinsured Motorist Protection where the accident is caused by a motorist who does not carry sufficient insurance to pay for claims.

4. Registration and Licensing

Vehicle owners must complete registration and licensing of a vehicle before they can legally operate it in British Columbia. They are required to purchase and carry a basic Autoplan insurance package that includes third party liability coverage. Third party liability coverage provides protection for bodily injury, death or property damage up to $200,000 ($1million for taxis and buses) as well as legal, investigative and court ordered interest from the claim.

The registration, licensing and insurance may be obtained from Autoplan brokers.

5. Autoplan brokers

There are over 900 Autoplan brokers who perform the following functions:

- registering, licensing, and insuring licenses and insurance;
- canceling or renewing licenses and insurance;
- changing coverages, owners' names and addresses, vehicle ownership and vehicle descriptions;
- issuing new plates, decals and insurance;
- enrolling customers in the Autoplan finance program;
- collecting fines and debts;
- informing and advising customers on Autoplan products.

6. Premium Structure

British Columbia implemented a bonus/malus system with factors including value, use of and garage location of the vehicle along with annual surcharges ranging from $115 to $3000 based on drivers' accumulated penalty points.

Each year, ICBC determines the total amount of premium income it will require to provide Autoplan coverage to all motorists in the province based on projections of the number and costs of claims. Those calculations determine whether an increase in premiums is required. In determining individual premiums for most private passenger and light commercial vehicles, the following factors are considered:

- purpose for which the vehicle is used (e.g., pleasure, drive to work);
- territory of primary location when not in use;
- make, model, risk, age and original value of vehicle;
- cost of prior years' claims under each rate class; and
- nature of insurance coverage chosen[169].

Auto insurance premiums in British Columbia have risen by 12.2% over the last 8 years.

ICBC spent $94 million in 2001 and $84 million in 2002 on non insurance activities which were financed through automobile insurance premiums. It remitted $425 million in 2001 and $417 million in 2002 of gross revenue to the provincial government.

In April of 2003, the compliance operations conducted by ICBC were transferred back to the provincial government. ICBC will continue to carry those costs by annually remitting to the provincial government an amount of $25 million, which is the cost estimated of operating the compliance function.

ICBC carries out a significant number of road safety activities at a cost of between $40 and $50 million a year, a large portion of which are special funding for police and municipal activities which would otherwise require separate taxpayer funding.

Although it is not obliged to pay income tax to the provincial government, ICBC reported it pays $120 million of costs through premiums it charges. Those costs would otherwise fall upon the provincial government or other public agencies. ICBC contends the provincial government is compensated with a 4% premium tax on all premiums (either private or public) received into general revenue and the above costs which represents a further 4.5% borne by ICBC premiums alone.

ICBC reported net income of $45 million in 2002 which represents 1.7% of revenue, a figure very close to a breakeven. It contends this result is acceptable given the uncertainty involved in the insurance industry.

ICBC currently requires to rebuild its capital reserves and plans to budget to provide reasonable positive bottom lines in the future.

B. Saskatchewan

The first public plan in Canada was established in Saskatchewan in 1944. In 1946 automobile insurance was made compulsory and the Saskatchewan Government Insurance Corporation (SGI) was given monopoly status. Its plan is known as the "Auto Fund". SGI also writes optional lines of insurance in competition with private insurers.

1. History and Current Program

A document entitled "A History of SGI"[170], reported that the conditions that led to the introduction of compulsory auto insurance in the early 1940s were bleak from the depression, drought and war. This province had the highest per capita debt, lowest per capita incomes, had no ability to borrow for over 14 years, and was paying 30% of its total annual revenue for interest on its accumulated debt[171]. The debt in 1944 was $177 million. Its residents paid more than $50 million in premium and received about $19 million in insurance protection. The poor economy drove many out of province insurers out of the province and availability was a serious difficulty. The Co-Operative Commonwealth Federation (CCF) government identified the insurance problems as follows:

- high costs;
- heavy involvement of out of province insurers;
- less than 10% of its vehicles were insured;
- there was no compensation plan for traffic injured.

In 1946, a Committee to study accident injury compensation produced a report entitled "A Report on the Study of the Problem of Compensation for Victims of Automobile Accidents". The report recommended compensation for injury or death regardless of fault. The original legislation provided limited compensation on a no fault basis to persons suffering bodily injury or death due to a motor vehicle accident to a maximum of $5000. The original insurance did not include property damage or third party liability but did respond to residents driving outside the province within North America and persons injured in the province by vehicles insured outside the province[172]. It was the first limited no fault auto insurance plan in North America and provided basic universal insurance to Saskatchewan owners and drivers on a break even basis. Premiums were to pay benefits and expenses. Any deficit is made up through increased premiums[173].

Legislation passed in March 1948 included collision, public liability and property damage. In 1953 the extended coverage, increased limits and high claims led to the first deficit, which resulted in a rate increase[174]. In 1981 SGI increased liability coverage from $35000 to $100,000 in 1981 and then to $200,000 in 1985.

Between 1984 and 1990 the Conservative Government made efforts to privatize SGI's general business operations while retaining the compulsory auto insurance program. Court proceedings thwarted those plans and in 1991 the government was defeated by the Opposition NDP. The new government created a subsidiary company to sell property and casualty insurance outside the province. It is not tax exempt like SGI.

Between 1988 and 1993 SGI observed almost 40% of the claims dollar was allocated to bodily injury liability claims. It set up an Injury Study Advisory Board with the objective of improving and updating benefits and coverage, and realigning priorities to place medical and vocational rehabilitation first, loss of income next, then pain and suffering and addressing the injury crisis.

In 1994 the Auto Fund suffered a loss of $93.8 million, which brought the deficit in the Rate Stabilization Reserve to $108.9 million.

In 1995 Saskatchewan abolished fault based indemnification subject to one exception whereby the right to take legal action for economic loss was maintained for traffic injured whose gross earnings exceed $50,000 per year. The Saskatchewan Auto fund provided a personal injury protection plan similar to that of Manitoba. Benefits were indexed to CPI. This compensation plan was also introduced to address escalating cost of tort awards to traffic injured[175]. In this province bodily injury claims costs were continuing to increase above the rate of inflation. There was pressure to increase premium rates and the rate stabilization fund was depleted. In the year ending December 31, 1994 the Auto Fund had a loss of nearly $94 million and an accumulated deficit of $105 million.

After implementation of its Personal Injury Protection Plan the number of personal injury claims declined by 30 %. Personal injury claims costs declined by $108 million or 48%. It is thought that the change to this compensation model was the major factor to explain the savings. The right to sue has thus been eliminated for all traffic injured except where a not at fault claimant has economic damages that exceed the benefits provided under the Plan. The tort remedy is further restricted by a 90% of net income limit.

2. Premiums

The experience of the Saskatchewan Plan was that it reportedly had successfully operated at a ratio of 85% return of premium to traffic injured since 1946. It had built a surplus and reserve fund in excess of $4.5 million as well as supports a Driver Education and Training program at a cost of $693,247. In its 1968 Annual report, SGI indicated an investment in excess of $28,000,000 in bonds and debentures[176]. Further it reportedly returned investment income to the provincial insurance fund where it supplemented revenue from other sources and helped defray costs to policyholders[177].

Saskatchewan reportedly had an administrative expense ratio including premium acquisition costs of 12.5 %[178].

In Saskatchewan, the premiums are based entirely on the vehicle's characteristics, i.e., wheelbase, value, repair ability, and accident frequency. Annual surcharges are based on the drivers accident and conviction records for the three year period preceding renewal. Surcharges for at fault accidents start at $100 and start at $25 for traffic convictions.

3. Broker Force

By 1995 there were 380 brokers serving SGI[179].

4. Rating System

Saskatchewan, the premiums are based entirely on the vehicle's characteristics, i.e., wheelbase, value, repair ability, and accident frequency. Annual surcharges are based on the drivers accident and conviction records for the three year period preceding renewal. Surcharges for at fault accidents start at $100 and start at $25 for traffic convictions.

5. Choice/no fault

This scheme was introduced January 1, 2003.

The new tort coverage provides some benefits regardless of accident circumstances and allows the right to sue for pain and suffering, subject to a $5,000 deductible. Like the benefits under no-fault insurance, they will be indexed annually to the rate of inflation. The choice of auto injury insurance is available not only for vehicle owners but all Saskatchewan residents 18 and over. Parents can pick the coverage for their children. To ensure no Saskatchewan person is without injury insurance coverage, all people will be covered by no fault insurance unless they choose to opt out and pick tort coverage. Choice can be made by filing a one-page notice can be filed at any of the 435 SGI motor license issuers in Saskatchewan.

The tort package permits a right of action for expenses in excess of the basic package and for pain and suffering subject to a $5000 deductible. The defined package includes up to $20,000 for medical rehabilitation unless the injuries are catastrophic and in that event the medical and rehabilitation is up to $150,000. The permanent impairment award extends to $10,000 except if catastrophic and then the award extends to $130,000. Like the benefits under no-fault insurance, they will be indexed annually to the rate of inflation. On introduction, the premium for both tort and no-fault will be the same and there will be no fee for changing auto injury insurance.

C. Manitoba

Prior to 1971, automobile insurance was not mandatory for road users in Manitoba. Since a large percentage of motorist did not have insurance coverage and were subjecting themselves and others to the risk of catastrophic financial loss, it was considered a serious social problem. The problem prompted the Manitoba government to establish a committee in 1969 to investigate the feasibility of initiating a public auto insurance program, to receive representations regarding auto insurance, to make recommendations in the public interest and to submit draft legislation[180].

1. Report of Manitoba Automobile Insurance Committee- 1970

The Committee recommended the introduction of a public plan as discussed earlier in this report. Its other recommendations included:

- A system combining 'no fault" insurance and tort as the best practical and immediate remedy to overcome the system's present deficiencies;
- The plan must be compulsory for all owners and operators of vehicles and benefits available to all persons suffering loss in Manitoba auto accidents;
- The plan must provide conventional forms of bodily injury and property damage liability insurance to meet financial responsibility requirements of Manitoba motorists traveling outside the province;
- The plan must coordinate collection of premiums and integrate same with payment of driver license and vehicle registration fees;

- The plan would be based on the Saskatchewan plan but incorporate higher benefits in some areas and allocate higher proportions of premium costs to drivers and less to owners;
- An imposition of a gasoline tax would be an alternative or additional method of raising premium;
- The tort system would be used for determination of bodily injury claims where same are not satisfied by the basic accident benefits and for vehicle damage claims up to $200 not covered by the basic no fault collision insurance;
- The plan would be a major step in the direction of a complete no fault system to be introduced in an orderly and timely manner;
- For disputes over the vehicle damage deductible amount of $200, legislation to allow same to be resolved in small claims court so legal services and costs can be eliminated.

2. Establishment of Manitoba Public Insurance Corporation

The Automobile Insurance Act proclaimed on September 21, 1970 established the Manitoba Public Insurance Corporation ("MPI") as a Crown Corporation responsible to develop and administer a universal plan of basic automobile insurance for the province. The government policy was that MPI and the insurance plans administered by it be completely self sustaining and that there be no diversion of any funds of MPI to any other Government agency or department[181].

(a) Funding

Funds for the initial organizational expenses consisted of an advances of $320,000 from the Minister of Finance which advances together with interest were repaid in full on September 21, 1971. At that date many of MPI's operational functions were integrated with registration of vehicles and licensing of drivers through the Department of Highways Motor Vehicle branch. Proper allocation between these and other participating agencies were to be made at a later date.

(b) History of Operation

The plan popularly known as "Autopac" commenced November 1, 1971. The premiums paid by motorists would create a fund to pay benefits in the event of death, injuries and damages sustained in auto accidents. Surplus from operation of the plans would be retained by MPI in the Fund and used to increase benefits, reduce premiums or absorb any deficits that may occur .

Returns filed by private insurers for the twelve month statistical period prior to the introduction of Autopac showed $35.6 million in auto insurance premiums in Manitoba was received. However, only a small percentage of achieved owners carried full insurance protection, since the product was not compulsory. It was reported that 71% of vehicle owners did not have medical insurance; 55% did not have no fault accident benefits coverage; 26% did not have collision coverage; 6% did not carry fire or theft insurance and a substantial number carried no insurance.

During the first year of operation, MPI collected $51.5 million in revenue which represented 12 months of driver insurance premiums and 16 months of vehicle and extension (optional) insurance premiums. For the first year under review, the total of revenue earned was $37.9 million with the balance deferred to February 28, 1973, the end of the then current license year.

It was forecast that if all motorists carried the minimum insurance provided by the basic Autopac plan, and a portion also chose increased protection, premiums exceeding $45 million would have been paid by Manitobans in 1971-2 under the private insurers rating structure and rates. MPI reported that if Autopac had not been introduced, there would be added to that sum, an annual rate increase assessed by most insurers in 1971 and a possibly further rate increases in 1972 .

MPI contended that the 12 month premium of $37.9 million under the basic and extension plans demonstrated an average saving to Manitoba motorists of about 15% in 1971-2 under Autopac. It reported claims of 127,400 amounting to $31.4 million producing an earned claims ratio of 83%. The total operating expenses equaled $6.4 million or 17% of premiums earned, including $760,800 in premium taxes either paid or due to the provincial government .

Since the plan called for placement of insurance at the same date as registration of vehicles and issuance of drivers' licenses, when a great portion of revenues are received within a short time span, those funds along with funds available through claims reserves are invested for a fair return through the Manitoba Department of Finance. At October 31, 1972 $6.2 million were committed for purchase of Manitoba debentures.

MPI also applied investment earnings to underwriting results when establishing rates to minimize the amount of premiums paid by motorists to the fund. Those interest earnings in 1972 totaled $1.6 million .

In 1974, the plan extended to optional insurance business and MPI later that year began general insurance services and currently also writes optional lines of insurance in competition with private insurers.

(c) Transitional Assistance

A Transitional Assistance Board appointed by the Government on May 21, 1971 was empowered to receive and consider applications for transitional assistance to licensed insurance agents and salaried employees of insurance agents and companies of auto insurance in Manitoba who might lose income as a result of the implementation of a universal compulsory insurance plan and to provide recommendations to the Minister of Municipal Affairs regarding the nature and amount of assistance to be provided to each applicant.

Assistance payments up to September 30, 1972 totaling $1.2 million in the form of assistance grants were made and borne entirely by MPI.

(d) Interim Facility

MPI established an emergency service known as The Interim Facility to provide reasonable minimum auto insurance coverage for motorists whose auto insurance policies were expiring and would be unable to obtain short term policies for the period up to the date when the universal plan was to become effective. Each insurance certificate issued through this facility was written to expire at midnight of the day the universal plan was to come into effect. Its underwriting policy was to accept all applications properly submitted. It was in existence for 3 months and accepted 9054 risks.

(e) Auditor's Report

The auditor's report for 1971 indicated development costs of $1,694,576 consisting of MPI expenditures, excluding costs incurred by the Manitoba government. Appropriate sharing arrangements between the government and MPI were analyzed.

(f) Employee Relations

At October 31, 1972, MPI had 301 employees and entered into its first collective bargaining agreement with employees represented by the Manitoba Government Employees Association.

(g) The Gasoline tax

The 1975 MPI annual report noted that an amendment to the Gasoline and Motive Fuel Tax Acts provided the Corporation with revenue of 2 cents per gallon on gasoline and motive fuel effective May 19/75.

The income shown from the gas tax over those years was:

(i) 1974/75 $3.2 million

(ii) 1975/76 $6.5 million*

(iii) 1976/77 $6.8 million

(iv) 1977/78 $2.0 million

*It was noted in the 75/76 report that revenue from this area was "higher than expected."

The drop in the income level in the 1978 report suggests the tax was ended during that fiscal year. It is suggested that the gas tax was brought in as an alternate to straight premium increases during those years. However, it may be that the tax was implemented initially to help mitigate the level of more convention premium increases since rates increased 9.5% in 1974 and 14 to 19.5% in 1975 and 12.5 to 15% in 76 (no increases in 77 and 78 hence it appears the need for the gas tax directed to MPI was gone). It is thought the tax remains in effect but, since the mid/late 70s, the revenue has flowed directly to the government, not MPI[182].

(h) Premium Structure

In Manitoba, the premium is based mainly on the vehicle make, model, geographic location and driving record. There is a base charge of $35 on each driver's license, that can be reduced by accumulating merit points for each year of accident free driving. Driver demerit points attract added premiums from $150-999 and at fault accidents attract surcharges from $250-750.

(i) Kopstein Report and the Pure No-Fault Scheme

In 1998 the Government of Manitoba established an Autopac Review Commission 1998 as a result of public dissatisfaction about MPI. The following year its report was released ("the Kopstein Report") which revealed that there was some validity to the public concerns expressed about the public corporation. The following recommendations were made:

- Accountability for all policy directives should be borne by Government through legislative process;
- The Corporation should account to Government in same manner as would a private sector Corporation to its shareholders;
- Government must lay a complete accounting report to legislature;
- There must be a proactive public reporting mechanism;
- A monopoly must be accountable for fair dealings with public segments that depend on driving for a living;
- There must be clear guidelines for division of responsibility between Government and the Corporation;
- Directors should address both business and social policy and should be appointed not to account for diversity but expertise;
- The government should be authorized to give directives to the Corporation;
- The Corporation's board should have authority to direct the Corporation;
- The Minister must not be the Chief Executive Officer;
- The line of authority between the Government and Corporation must be clearly defined;
- The Chief Executive Officer be remunerated at same level as one in the insurance industry;
- The Corporation should seek rate approval from Public Utilities Board for first 3 years and thereafter if underwriting ratio not within certain ranges, e.g. 90-110; 85-115;
- There should be annual actuarial review of loss reserves;
- There should be periodic adjustments in deductibles to keep pace with inflation;

- There should be internal audits of ratemaking and underwriting, claims administration, technology, financial administration, general administration, and marketing and product distribution.

The Kopstein Report made some important findings about bodily injury loss costs. From 1984-1987 Autopac costs increased 100% from $40-80 million whereas the property damage increased by only 45 percent. It concluded the ability of tort to deter negligence was not supported by the evidence. Its major conclusions were that[183]:

- fault is an unsatisfactory basis to determine entitlement to injury compensation;
- current costs cannot be reduced without impairment of benefits;
- improving no fault benefits and slightly decreasing tort recovery will increase overall costs;
- modified no fault would reduce costs but increase inequities in tort system;

It was estimated that with pure no fault the system could provide a maximum of $500 per week income replacement, and $200 million maximum impairment and still produce savings for 1987 of $39.8 million or 17.5% of total losses of MPI which would reduce bodily injury compensation losses by about 44 percent.

The Kopstein Report stated that the highest priority of an automobile compensation scheme should be to provide reasonable living standard for catastrophically injured, if necessary at the expense of those with minor injuries although it was recognized that maximum income replacement would not be adequate for certain income earners. It was very firm in its conclusion that the concept of fault as a device for the compensation of traffic injured was inequitable because it can fail to compensate at all some who are innocent of negligence and it will not compensate those normally careful drivers who are negligent due to a momentary lapse.

The Kopstein Report disagreed with the Osborne Report's view on the value of the tort system and thought the idea that some reckless drivers who were not deterred by the Criminal Code, sanctions including jail, or *Highway Safety Act* penalties would nonetheless be deterred by tort system responsibility was too weak and too remote a possibility on which to retain a system which was vitally defective in terms of equity and onerous in terms of cost. It said:

> ***"The object is to deter however slightly that fringe group which drives recklessly. A system which must subject a majority of people who are normally careful to the possibility of severe prejudice for an occasion of inadvertent negligence in the mere hope of deterring the negligence of a fringe group has little to commend it.*** [184]

As a result of the recommendations of the Kopstein Report, Manitoba implemented a pure no fault compensation scheme similar to that of the province of Québec.

Manitoba pure no fault (called Personal Injury Protection Plan) was introduced on March 1, 1994 to replace a tort based model with modest no fault benefits. It was introduced in response to a large increase in injury claim costs. The final appeals in Manitoba are to a specially constituted commission. Upon introduction of this benefit structure, MPIC withdrew a proposed 10% premium increase. The benefits are indexed to the CPI. It reported a modest profit at its year end of October 31, 1994 but also showed a $62.5 million loss in the next fiscal year as a result of increased reserves for bodily injury claims carried over from the tort based system. The KPMG Report said the Personal Injury Protection Plan has reduced the number of injury claims[185].

The pure premium reportedly increased at an average rate of 16% per year between 1980-1993 to a level of $262 in 1993. After the pure no fault model was implemented there was a net reduction in premium of 34% in the first two years[186].

D. Québec

1. History

The Gauvin Report undertook detailed analysis of the existing system. It displayed the information in various tables attached to the report. A table 1[187] showed the allocation of premiums by percentage and in dollars and estimated the total auto insurance premiums would amount to $450 million. The percentage of the premium used for premium tax was 2% or $9 million.

A Table 2,[188] reproduced below, compared the administrative costs in Québec with those of Saskatchewan and Manitoba where Crown corporations administered the schemes in the latter mentioned provinces. It reported as to operating costs, those provinces used almost half the amount of the Québec system for allocation of losses. However it found it incorrect to conclude that the Québec operating costs were excessive in comparison to those two systems because each insurance plan and its administrative methods had its own characteristics which explain their difference in cost.

Allocation of Administrative Costs as a Percentage of the Premium Dollar

	Saskatchewan %	Manitoba %	Québec %
Premium tax	3.0	2.0	2.0
Selling expense	3.6	5.3	13.8
Claims settlement	6.8	8.1	12.3
Underwriting and policy processing	2.7	1.5	5.2
General administration	1.8	2.5	3.3
Total	17.9	19.4	36.6

A Table 4,[189] reproduced below, showed a comparison of operating costs of the various systems and concluded that the expenses of the Québec system were much higher in every sector of operations. It concluded the cost variations were due to the following factors:

Marketing

- different role of the broker
- Premium assessed directly from the holder of the drivers' permit
- Limited advertising
- Limited supervision

Settlement of claim

- Legal and court proceedings eliminated
- Valuation of damages and claims settlement simplified

Underwriting practices

- elimination of selection of risks
- simplified rating structure
- simplified procedures for issuing of policies
- elimination of transfers

General Administration

- fewer administrative duties
- absence of inter-company strategy and certain economies of scale

Source of savings

- using different methods and procedures in role of broker, processing policies and underwriting risks
- changes in manner of issuing policy
- changing insurance coverage
- establishing a monopoly

Operating Costs of the Various Systems (Shown in Percentage of Premiums Written)

Item	Saskatchewan System	Manitoba System	Manitoba System Adjusted	Québec System	Cost Variations of the Present System in Québec and the Manitoba System Adjusted
Taxes and licences	3.0	2.0	2.0	2.0	—
Selling expense	3.6	5.3	5.0	13.8	8.8
Claims	6.8	8.1	7.0	12.3	5.3

settlement					
Operating Costs of the Various Systems (Shown in Percentage of Premiums Written)					
Underwriting and policy processing	2.7	1.5	1.2	5.2	4.0
General administration	1.8	2.5	1.9	3.3	1.4
Total	17.9%	19.4%	17.1%	36.6%	19.5%

The Gauvin Report concluded that the fault concept must be completely abolished. The Committee had considered partial tort reforms but concluded they were compromises and half measures which were not acceptable because the compensation was inadequate for those in the greatest need such as insureds suffering for long term disability, their dependants, dependants of those killed, and dependants of those drivers who were judged at fault and to whom compensation was refused. Adequate compensation in all cases has a price but if desirable to reduce the cost of auto insurance, it would be wrong to do so by reducing the compensation of those who are the most disadvantaged[190].

One of the original members of the Gauvin Committee has recently provided an interesting historical account of the criticisms of the Gauvin Report by insurers, brokers, trade unions and lawyers groups[191]. He reported that every service provider directly affected rejected the notions of no fault insurance and government monopoly delivery system[192]. Consumer groups endorsed no fault insurance but were more reserved about government monopoly whereas trade unions agreed with no fault insurance and strongly endorsed the government monopoly model[193].

Because of the continuing controversy after October of 1974, a subcommittee was struck to examine the Gauvin proposals led by Justice Desjardins of the Court of Québec. His report delivered in July 1975 examined four options and recommended a model which adopted most of the Gauvin Report recommendations except for one issue in which it suggested entrusting the administration of the basic compensation plan to existing government organizations such as the Québec Pension Plan and Motor Vehicle Bureau. In essence, Justice Desjardins reintroduced the idea of a partial government operated ownership of automobile insurance[194]. However, his report was not acted upon.

The new Minister of Consumers, Cooperatives and Financial Institutions, Madame Lise Bacon announced the government would not move on auto insurance legislation and would not adopt the no fault model proposed by the Gauvin Report. Further she said it would leave the administration of and conditions for marketing insurance in the hands of private enterprise as state operated ownership of automobile insurance was attributed to the regional, political and ideological nationalism of Canada's western provinces[195]. Bacon declined to support government delivered auto insurance for the following reasons:

- it would add costs to the insured public due to higher salaries paid to government employees and increase in premiums likely in other insurance contracts following 50% reduction in volume of business of private insurers;

- it would compromise cost effectiveness of private insurer activities;
- inefficiency and unwieldiness in centralization of the plan would increase costs which would be added to start up costs of a public insurer;
- it would risk the province's image on financial markets;
- it would make government accountable for premiums and expose it to demagogic pressuring[196].

She put forth a compulsory auto product with a modified no fault plan but her proposal was not favorably received[197].

In August of 1976,the Parti québecois announced that if elected, it would implement the Gauvin Report proposals delivered by a government monopoly supplier. After its election, the then new minister, Madame Lise Payette formed a task force to make proposals for a policy statement.

The examination of its proposals resulted in a report of the new government's policy statement known as the "Blue Book" made public on April 15, 1977[198].

The Blue Book departed from some aspects of the Gauvin Report and departed as well from some aspects of the program of the Parti québecois. It endorsed the idea of a full no fault plan for bodily injuries but did not agree to full government ownership of all automobile insurance. It did not wish to adversely affect the development of Quebéc enterprises that held 35% of the automobile insurance market. It did not accept the objectives of patriation of decision making centres and objectives of employment creation that underlay the government takeover of automobile insurance in the western provinces[199].

It put forth a proposal to entrust management of the basic plan for bodily injuries to a public insurer and let private insurers offer supplementary optional no fault insurance plus compensation for property damage. This proposal would allow creation of a public company with a narrower mandate at a lesser cost and with greater speed. As well, it offered better guarantees to transforming the compensation scheme into a pure no fault plan while facilitating new means for financing risks. Finally, it would separate that part of automobile insurance that is of social importance and the part which is not.

The Blue Book contemplated financing no fault insurance with either a gas tax, a premium payable on issuing a driver's license or vehicle registration, a contribution on income or a combination of these various means of financing. It hinted at a return on premiums in the form of indemnities reaching 75-80%. However, the government did not promise a significant reduction in auto insurance premiums.

There was criticism from the newspapers, insurers, lawyers and trade unions. Eventually the lack of commitment to reducing premiums became a main criticism and it was argued that a dual system, one for bodily injuries operated by government and one for property damage operated by private industry was alleged to increase management costs. Lawyers, brokers and claims adjusters all objected to their roles being reduced or locked out altogether. However the minister undertook a consultation tour, which answered many public questions and made clear that the public would not accept an income tax to finance the project.

A parliamentary committee studied the new bill for four months and received briefs opposing the plan from all vested interests. As a result, as a concession to insurers, the Minister eliminated insurers' right of subrogation against the persons liable for the accident so that there would be no need to attend court to allocate indemnities paid to their insureds. Second the government attempted but unsuccessfully to empower the Régie to acquire shares in a private company formed to carry on the business of damage insurance. The act came into force on March 1, 1978.

2. The pure no fault model

The Province of Québec instituted a monopoly automobile compensation plan in 1978 over the bodily injury portion while the property damage coverages remained in the hands of private insurers. In Québec, the government also reformed the compensation model and introduced a pure no fault scheme which entirely eliminated the right to sue, and substituted a schedule of benefits to include awards for pain and suffering as well as economic losses. Québec charges $99 for each private passenger vehicle, and different rates for each class of vehicle and an annual fee of $25 in addition to driver license fees.

The Québec pure no-fault scheme is totally foreclosed to traffic injured with respect to personal injuries. In addition to the public plan, the minimum amount of liability coverage for property damage required is $50,000. No-fault benefits are provided through mandatory first-party insurance to all individuals injured in automobile accidents.

The plan is financed jointly from general revenues and from a uniform premium system (for given classes of vehicles) independent of an individual's risk class and safety record. When an income replacement indemnity is payable under the Québec Pension Plan or the Act respecting industrial accidents and occupational diseases, the no-fault benefit is correspondingly reduced.

At the end of 1972 5,221 insurance agents and brokers represented 100 insurers in Québec; 4,335 were for the most part grouped in brokerage firms and were members of the Brokers Association. Remuneration was 12.5% of the premium or $62 million out of $450 million[200].

A stabilization reserve was created at the end of 1979-80 by surplus revenues over expenditures and by the actuarial adjustment of the actuarial liability.

Initially the Act required the former Motor Vehicle Bureau to pay to the Régie the amounts required to indemnify traffic injured but as of 1980 the Bureau and the Régise merged. The fuel tax was maintained until 1983 and then abandoned, leaving the financing of the plan by fees from motorists for registration certificates and drivers' licenses.

The annual registration fee in 1978 was $84. In 1996 it was increased to $117. In 1997 the insurance premium was reduced which dropped the registration fees to $87. The insurance fee for 1997 was equivalent in constant dollars to a fee of $227. When the plan came into effect, the contribution to the insurance fund for drivers was set at $14 per year. Financing the first year of operations required $345 million.

Belleau reported that the Québec system has been very successful with respect to the issue of return on premium. He noted that for the year 1974, the Gauvin Report established the insured return on premium at 59%. According to an assessment in 1995 (Fluet-Lefebvre) it was estimated that the return for bodily injury was 61% for the period 1978-87. Between 1988-92 it rose to 96%.

SAAQ continues to operate the compensation fund for property damage by uninsured or unidentified drivers. It paid $87 million from 1978-91 comprised of $5 million for administrative expenses, and received $35 million from at fault drivers. Between 1992-4 it paid $0.9 million for administrative expenses.

E. External Evaluations Of Public Models

There is a dearth of objective external evaluations of public models in Canada particularly in comparison with one another. As a result, it is difficult to draw objective conclusions as to whether public automobile insurance models achieve their optimum efficiency and efficacy.

One actuarial comparison performed in 1991[201] indicated the Manitoba and Saskatchewan plans showed considerable savings over privately run systems particularly in distributing the product and also in the number of vehicles handled per employee. However, in British Columbia a large publicly run plan with much urban exposure did not show expense savings in the years up to 1989.

Percentage changes in average premium per vehicle showed significant increases in Manitoba and British Columbia, whereas the public portion of the premium in Québec was stable, decreased by 14% in 1987 and then remained unchanged for some years.

Public schemes have enjoyed public support even when socialist governments were replaced by more business friendly governments partly because of lost start-up costs and loss of positions in the civil service, and partly due to expense savings in rural areas. The cost savings for larger more urbanized provinces has not been demonstrated up to 1991.

The KPMG Report which was undertaken at the request of the Government of British Columbia in 1991 observed the difficulty in attempting to benchmark comparable jurisdictions. It found vehicle insurance cost comparisons between jurisdictions difficult and of limited benefit. It particularly noted the significant difficulty in seeking to compare ICBC with MPI and SGI because of lack of public information, especially with SGI. It was noted there were also differences in cost of living in each province, methods of determining vehicles insured and differences in the required compulsory coverages in each region. As well, at that time, MPI and SGI had no fault models which were not identical to each other.

However the exercise of neutralizing effects of those changes revealed that British Columbia had the highest claims costs and resulting premiums per insured vehicles by a wide margin. British Columbia costs were close to twice those of MPI and SGI. Commissions were consistent at between 5-6.6%.

This report also referenced a study[202] that reported between 1978-94 pure premiums increased at about 5% per year whereas Manitoba and Ontario had had average annual increases in excess of 10 %.

Despite the foregoing, the KPMG Report contains a very useful current and thorough evaluation of the British Columbia model at the request of the Government of British Columbia due to concerns over rising premium costs expressed by consumers. The results of this study are reviewed below in some detail as they clearly show that even with a public scheme premium pressures can arise as a result of the type of compensation system in place.

1. The KPMG Report

It appeared British Columbia consumers were indicating premiums rates were too costly, and as a result the Government froze rates for 1996 and 1997 and requested ICBC to find ways to cut costs and rising premium levels.

This report made the following observations:

- Motor vehicle insurance costs increased higher than rate of inflation from 1986-1996
- Average premium increased by 135% over the same period[203]
- Claims costs represented 79% of total expenditures and increased at more than 6.5% per year after inflation[204].
- Claims operating costs expenses and commissions grew 5% per year faster than inflation over 1985-95.
- Introduction of premium tax in 1987 added to increase in product costs[205].
- Bodily injury claims represent 50c of every dollar of claims including legal and other tort claims costs.
- The real bodily injury claims costs per insured vehicle nearly doubled over the 10 year period.
- The trend is due to increased claims frequency and increase in average cost per claim.
- Bodily injury claims grew at 7% per year far faster than rate of property damage claims[206].
- Bodily injury claims increased 50% over the past 10 years.
- The propensity to file personal injury claims increased by 40% over the 10 years.
- The average bodily injury claim was found to be 4 times the average property damage claim.

These increases were found not to be attributable to:

- Lack of vehicle safety[207]
- Increased population and vehicle growth[208],
- Wages and salaries[209]
- Aging population
- Increase in use of vehicles
- Increase in traffic congestion or influx of new drivers
- Rate of inflation in medical services for injury claimants

It was noted that the rate of utilization of medical services might be increasing.

Rising claim costs and numbers did appear due to:

- Increasing propensity and ability to maximize awards especially due to non economic losses
- Growing sense of entitlement to receiving motor vehicle insurance payments
- Growing inclination to focus on pain and suffering.
- Increased advertising by lawyers and tendency to seek legal representation
- Willingness of courts to increase types and amounts of compensation awards.
- Increased incidence of fraud.

Studies by ICBC between 1992-5 had shown that soft tissue injuries comprise 73% of overall claims. The average cost of per claim for soft tissue injury receiving a bodily injury award was at least 15 times as high as the cost for a pure accident benefit award. The major factor was the ability to obtain bodily injury awards for pain and suffering for soft tissue injuries. There was no non economic award in the no fault accident benefits[210].

The increasing injury awards seemed to be due to:

- Rise in soft tissue injury claims

- Greater propensity toward litigation generally

- Irreversible nature of precedent setting awards

- Claims process viewed as avenue to achieve financial gain as opposed to a means to ensure recovery of health and replacement of real economic loss.

It was concluded that:

- The motor vehicle insurance cost problem would remain in the short and long term and

- The problem required product reform to lower the cost of claims especially minor claims[211].

- A longer term solution also required change in behavior of motorists, policyholders to slow trends and costs over long term and ongoing cost avoidance problems.

The study produced a very useful cost breakdown of ICBC dollars from 1995 data. It showed that:

- 87% of the costs rated to payments to claimants and claims related expenses.
- 8% of costs were paid for distribution of the product.
- 9% of total expenses or $223 million represented total legal costs.
- $670 Million were paid to external suppliers, including defence counsel, glass repair shops, car rental agencies medical payments and the like[212].
- Brokers were paid $151 million.

In total only two thirds of the claims costs and expenses were put in the hands of claimants for their claims or damage repairs[213]. For personal injury claims, claimants receive only 72% return, with 17% paid to legal services. In property claims, the claimants receive 85% of the claims cost. It was recommended that cost cutting strategies be directed toward both claimants themselves and to all sectors that receive funding from the insurance scheme[214].

The report very usefully provided a fairly current explication of legal costs for 1995 as follows:

ICBC in house legal department	about $7 million.
ICBC external defence counsel hired to defend other tort claims	about $53 million.
costs for expert reports, independent adjusters and private investigators required for litigated claims was	about $17 million.
estimated plaintiffs' costs including contingency fees and disbursements	$146 million[215].

The analysis suggested firms that concentrate on large dollar claims (about 10) accounted for about $60 million in potential claims costs or about 13% of the total value of claims. Firms that concentrate on higher volume of smaller average claim size also numbered about 10 and accounted for about $54 million or 12% of total claims dollars dealt with by writ.

The report concluded that successful cost reduction required product reform to reduce overall claims costs while maximizing share of claims costs actually paid to or on behalf of claimants. It advised that only the two processes would have enough cost potential to generate meaningful savings were claims related expenses which represent 15% of total costs and insurance operations, which represent 8% of total costs. It stated only by changing the volume and nature of claims shaped by the design of the insurance product could sufficient savings be achieved to bring loss costs in auto insurance under control[216]. It emphasized that tinkering with or fine-tuning the product would not be sufficient. All stakeholders (service providers) must make an equitable contribution to the solution.

The KPMG Report also found that:

- Costs and claims trends have far outpaced key economic factors.
- Bodily injury loss costs have been rising in excess of inflation and population growth for over a decade.
- To bring cost components into line requires changes to the product, and alignment of a safe road policy.

It observed that the auto insurance system in BC did not adequately discourage irresponsible driving behaviour because the insurance system protects liability rather than injury, and requires innocent traffic injured to claim against their own insurer and their own insurance fund to recover the bulk of their compensation, which undermines and embitters the relationship between and among the participants. It concluded that the system was not sustainable if the current claims cost trend continued.

The KPMG Report observed that the main benefit of the existing system was the preservation of the right of access to an independent process to award fair compensation to an innocent person injured by bad driving conduct. However when this principle was measured against the deficiencies in the system, such as long delays, uncertainty about adequacy of compensation and rehabilitation, potential for exaggeration of claims, and high legal and investigative costs to establish claims, it said such deficiencies worked against the recovery of the traffic injured, erode the economics of the system and created an intolerable financial burden on policyholders who must buy and pay for the insurance product.

As such, the system should embrace a comprehensive solution that addresses many of the deficiencies simultaneously. Such a solution would:

- Re align the priority in favor of the seriously, permanently and grievously injured.
- Re align the priority to emphasize the importance of improving driving habits.
- Accept that much of the driving behavior that causes accidents is due to inadvertent momentary inattention or unexpected climate conditions that can happen to normally safe drivers.
- Reframe the goals from acquiring as much monetary recovery as possible to achieving more effective health outcomes and wellness.
- Entice the traffic injured to take responsible and reasonable measures to expedite their recovery from injury by actively participating in appropriate treatment protocols,
- Entice the motoring public to select appropriate insurance coverage, which might extend beyond the compulsory product.

The KPMG Report stated that product reform by itself could provide only a short term control of rising costs. It cautioned that:

- Underlying problems must be addressed in the medium and long term or the increasing cost trends will resurface.

- There must be a reduction of litigation processes and

- A shift to more efficient, expeditious and less costly dispute resolution,

- Elimination of disputes throughout the system replaced by assured injury benefits

- A refocus on better health outcomes, simplified fair processes, and improved driving behavior.

The KPMG Report predicted that the era of tort in automobile insurance is nearing its end because the price of maintaining the current adversarial system is substantial premium increases, which takes a growing share of personal and collective social wealth, combined with unpredictable and unfair awards. Solicitor client costs on a contingency fee basis up to 33-1/3% make this a major cost component in the current process. No fault models can replace the costly and lengthy tort benefits with well defined and controlled through a tightly managed administrative process, provide adequate protection, and aid in shifting the focus to better health outcomes provided it preserves justice, fairness and equity.

It outlined some lessons that can be learned from the experience in other jurisdictions including the following:

- Product change is invariably raising costs and premiums in bodily injury coverage especially in tort models.

- Government imposed rate freezes help to get the attention of stakeholders to the issues of rising costs and the suffering manifested in those costs but are not a solution.

- The TAC model fits its different social structure and safety net.

- A strong descriptive threshold is necessary to control the tort recovery costs can be effective, together with emphasis on early and effective rehabilitation and traffic safety initiatives.

- Maintaining the status quo for compensation models like BC are not feasible[217].

- Failures of threshold and no fault systems are usually due to a tort threshold that does not adequately restrict the right to sue or lack of balance between tort threshold and no fault benefits for wage loss or medical care.

- No fault models must have strong administrative controls on personal injury benefits and emphasize early effective rehabilitation.

- Traffic safety initiatives are most effective and cost effective when pursued on a large scale. A harmonized Atlantic Canada approach could achieve clear economies of scale in road safety advertising, photo radar, drunk driving, with integration of strategies among insurers, law enforcement and legislation.

The KPMG Report recommended a two-pronged strategy to reduce the current cost base and to shrink the additional claims trend of social inflation to zero[218]. The first prong required tort restriction whether by pure or threshold model. This was seen as a universal response to premiums that rise significantly faster than inflation[219]. No other way to reduce premiums[220] was seen as realistic or effective. The second prong required trend control. Trend control consisted of a series of interventions increasingly focused, effective and intense. For product reform to reduce bodily injury loss costs meaningfully in short and long term a cultural attitude shift in managing driving behavior and in injury management had to be brought about.

It has been reported that government declined to follow up with its commitment to implement the recommendations of the KPMG Report following a coalition of lawyers and pressure groups of injured persons[221].

2. Medical Investigative Studies of Claiming Behavior

In line with the emphasis on trend control in the KPMG Report, recent credible medical studies suggest litigation promotes sickness behavior. The well regarded research of Dr. David Cassidy[222] compared outcomes of whiplash injury recovery times between the full tort system of Alberta with the nearly full no fault system in Saskatchewan and concluded that traffic victims who do not have access to monetary recovery for soft tissue whiplash injuries recover more quickly than those who do have such access. Similar results have been produced in Alberta in respect of recovery periods for mild traumatic brain injury cases[223]. A study of the effects of a population based media campaign providing positive messages about back pain in Victoria, Australia has produced findings to suggest such strategy can be highly effective in reducing back related disability[224].

PART FOUR: COSTING

IX. ANALYSIS OF COSTING OF PUBLIC MODELS IN CANADA

Compared to data available in relation to the operating costs of private enterprise systems that are subject to periodic rating regulation, there is little in the way of current external evaluations or comparisons of costs, including start-up costs, of or among the public automobile insurance models in Canada.

The annual reports of the Canadian public auto insurance corporations immediately after conversion have been reviewed for information that might be appropriate to utilize in the exercise of projecting realistic costing of a public automobile insurance corporation for Atlantic Canada. The cost projections for public schemes in each of the Atlantic provinces as prepared by IBC in August 2003 have also been examined.

Some preliminary information about the automobile insurance industry in the Atlantic provinces was collected and is set out in **Graph 12**. A vehicle registration comparison was located and depicted in **Graph 13**. A driver's license comparison was located and depicted in **Graph 14**. Information was collected as to the earned average premiums in the Provinces of Canada and is depicted in **Graph 15**. Information was collected as to the average lost costs in each Province and is depicted in **Graph 16**. An attempt was made to locate the number of insurance brokers and commissions paid before and since conversation to a public model and is depicted in **Graph 17**. Finally, the number of employees and payroll of the public insurance corporations in Canada in 2003 is depicted in **Graph 18**.

What follows is a discussion and comparison of these key cost factors in the establishment of the public models in Canada:

- Start-up costs
- Property Asset/Expense (land and building) at start-up
- Initial Capital at start-up
- Operating Expenses, including acquisition costs & premium taxes

While some information was gleaned from the initial annual reports of these various crown corporations it is not clear today what methodology was used to calculate start up costs and it is not clear that all funding issues were fully described in the annual reports received. By its own admission ICBC indicates that its experience is now 30 years old, and as such it feels the drawing of parallels between the circumstances at the date of its formulation and what would be needed at present in transforming a model from a private enterprise model to a public monopoly would be a difficult and exacting undertaking. Accordingly it is possible only to make subjective assessments of what may have been considered in those initial costings. With those caveats, set out below is a summary of the relevant information reported about the start-up costs in each public system province.

A. Start Up Costs

For the purposes of this report, it is assumed that the start-up costs in a common public system would include:

- Infrastructure costs (bricks and mortar);
- Initial costs for computer networks, software, etc.;
- Initial costs for office equipment;
- Associated Legal costs;
- Other associated costs.

However, each of the provinces separate the property costs (buildings and land) from their initial start-up expenses. The property costs are considered assets, not expenses and are discussed separately.

1. British Columbia

(a) First Annual report of Insurance Corporation of British Columbia-for the year ending February 28 1974.

This report indicates that to facilitate the implementation of Autoplan by ICBC, a special fund designated as the AUTOMOBILE INSURANCE ACT FUND was established as a separate financial entity for accounting purposes. The Fund would be credited with income from automobile premiums and charged with the cost of claims, commissions and operating expenses including start-up and development costs.

All vehicles had to be insured under Autoplan at March 1, 1974. At that date one million Autoplan vehicle policies were in force with a total premium of $133,000,000. It estimated by the end of February 1975 there would be total premium revenue of $179,000,000 for 1.4 million vehicles. By July 1, 1974 every licenced driver would have paid an annual premium based on their demerit point record and expected to issue 1.3 million driver certificates by 1975 for an estimated income of $28,000,000.

In the first year of operation the Automobile Insurance Act Fund expenditures were shown as follows:

SCHEDULE A

Start Up Costs	$11,548,000
Prepaid operating expenses	1,627,000
Furniture and equipment	1,280,000
Inventory of stationary and supplies	414,000
Leasehold improvements	265,000
	$15,134,000

SCHEDULE B

Salaries and employees benefits	$3,037,000
Computer systems	2,934,000
Services provided by Province	942,000
Public information	833,000
Consulting services	707,000
Printing postage and supplies	655,000
Interest payments to Province	729,000
Staff recruitment	495,000
General expense net	49,000
Rent-furniture and equipment	207,000
Office facilities	130,000
Interim Auto Plan	830,000
	$11,548,000

One of ICBC's balance sheet assets was $14,638,000, allocated to PROPERTY -which included investment in the first year for land and construction costs for claims centers. The initial working capital provide to ICBC through loans from the Provincial Treasury totaled $18,000,000. That indebtedness was repaid in full prior to March 1, 1974 together with interest at prime bank rates.

(b) Second Annual report for the year ending February 28 1975

ICBC required to add an additional $1 million to its start up costs to provide coverage to motorists before Autoplan commenced operations.

The PROPERTY balance sheet asset increased to $28.9 million in the second year of operation for land and buildings.

In its second year of operation, ICBC expensed $4 million of its start-up operation costs, with its plan to amortize the initial costs over the period 1974-1979.

(c) Third Annual Report for the year ending February 29, 1976.

The report estimated a further amount of $3,700,000 was committed for the building and land acquisition program.

In its third year of operation, ICBC expensed $4.9 million of its start-up operation costs, with its plan to amortize the initial costs by 1979.

(d) Fourth Annual Report of February 28, 1977.

Private insurers re-entered in competition with ICBC in this year. Management determined that the start up phase of ICBC was complete and all unamortized deferred costs at March 1, 1976 have been expensed in the fiscal year which resulted in an additional charge to operations of $9,917,000 of which $9,797,000 was been charged to the AIA Fund and $120,000 to General operations

2. Saskatchewan

A history of SGI indicates the Government advanced $12,000 for start up costs, but evidently not that entire sum was required and it was repaid within the first year of operation. The plan was to reduce the cost of insurance by 10-25% and to return all operating surpluses to the citizens as increased social services. By the end of 1945 the loan was repaid and the company reported a surplus of $6388.

3. Manitoba

During the first year of operation, MPI collected $51.5 million in revenue which represented 12 months of driver insurance premiums and 16 months of vehicle and extension (optional) insurance premiums. For the first year under review, the total of revenue earned was $37.9 million with the balance deferred to February 28, 1973, the end of the then current license year. Funds for the initial organizational expenses consisted of an advances of $320,000 from the Minister of Finance which advances together with interest were repaid in full on September 21, 1971. At that date many of MPI's operational functions were integrated with registration of vehicles and licensing of drivers through the Department of Highways Motor Vehicle branch. Proper allocation between these and other participating agencies were to be made at a later date.

A Transitional Assistance Board appointed by the Government on May 21, 1971 was empowered to receive and consider applications for transitional assistance to licensed insurance agents and salaried employees of insurance agents and companies of auto insurance in Manitoba who might lose income as a result of the implementation of a universal compulsory insurance plan and to provide recommendations to the Minister of Municipal Affairs regarding the nature and amount of assistance to be provided to each applicant. The administration costs and payments to qualifying applicants would be borne by MPI.

MPI established an emergency service known as The Interim Facility to provide reasonable minimum auto insurance coverage for motorists whose auto insurance policies were expiring and would be unable to obtain short term policies for the period up to the date when the universal plan was to become effective. Each insurance certificate issued through this facility was written to expire at midnight of the day the universal plan was to come into effect. Its underwriting policy was to accept all applications properly submitted. It was in existence for 3 months and accepted 9054 risks.

For its first year of operation, the auditor's report indicated development costs of $1,694,576 consisting of MPI expenditures, excluding costs incurred by the Manitoba government. The transitional assistance costs amounted to $186,589 for a total for organizational expenses at $1,881,165. Appropriate sharing arrangements between the government and MPI were analyzed. In its second year of operation, Transition Assistance payments up to September 30, 1972 totaling $1.2 million in the form of assistance grants were made and borne entirely by MPI.

Hence, the total start-up costs, including the Transition Assistance payments totaled $3.1 million.

4. Québec

The RAAQ Annual Report 1979-80, disclosed the following information.

After the first year of operation, the Régie's revenue was as follows:

- $234.5 million - vehicle registration
- $39.5 million -drivers licences
- $22.2 million fuel tax

(Net investment earnings - $24.9 million)

A stabilization reserve was created at the end of 1979-80 by surplus revenues over expenditures and by the actuarial adjustment of the actuarial liability.

The start up costs were comprised of

wages and benefits	$ 796,076
professional fees	1,268,495
start up communication	51,569
information to the public	1,436,437
MVBureau collection system	1,638,565
WCB indemnity system	1,189,000

• office furniture	139,455
• rent of premises and equipment	125,909
• miscellaneous	61,577
Total	$6,808,008
less deposit interest	41,329
Start up costs at Feb 28, 1978	$6,766,679

5. Summary of Start-up Costs

Based on the above information gleaned from the historical annual reports, we can summarize the start up costs as follows:

- ICBC: 1974 at $12.5 million
- Saskatchewan: 1945 at $12,000
- Manitoba: 1971 at $3.1 million
- Québec: 1978 at $ 6.8 million

As these start-up costs may not represent a uniform definition of expenses, and took place over 30 year ago with different technology and information systems, a simple adjustment for price inflation may not be appropriate to estimate the start-up costs for the Atlantic region. However, using ICBC costs' inflated by *5%* per year for thirty years results in an estimate of $54 million.

In addition to these start-up costs, ICBC and Québec identified their additional costs associated with land and building costs which are discussed below.

The IBC, in a report entitled The Case for Competition[225], has recently provided its estimate of the initial start-up cost for each of the four Atlantic Provinces, ranging from a low of $12.3 million in Prince Edward Island to $88 million for New Brunswick. (These estimates exclude additional costs associated with land and building costs.)

B. Property- Land and Building Costs:

There are many decisions that will affect the property costs. Will some or all of the operations be centralized or decentralized, or a combination thereof? Will broker services continue, or will a call centre be used? Will there be a facility to obtain insurance on the internet? Will there be central claims centres? Will the property be leased or owned? Many of these decisions may affect the amount of space and location of space that will affect the costs.

When comparing the land and building costs of the crown corporations in other provinces variance in the market value of real estate should be considered.

In British Columbia, in its fourth year of operation, 1977, ICBC's Property and Equipment costs had totalled $46.8 million before depreciation (including furniture and leasehold improvements of $4.5 million). British Columbia had built centralized claim facilities. By 2002, its land and building costs had totalled $167 million, and had a net book value (i.e., after depreciation) of $69 million.

In Manitoba MPI, like ICBC, had built centralized claim facilities, however the specific costs for land and buildings is unclear from its annual reports. SGI reports in its 2002 annual report a total cost of land, buildings and improvements at $51.6 million, with a current net book value of $38 million.

The IBC, in its report The Case for Competition, has recently provided its estimate of the property cost for each of the four Atlantic Provinces, ranging from a low of $0.5 million in Prince Edward Island, $1.0 million for Newfoundland, $9.2 million for New Brunswick to a high of $10 million for New Brunswick, for an approximate total cost of $21 million. However, the underlying detailed assumptions for these estimates is not provided, and presumably there would be overlap amongst the provinces.

Once alternatives for the general structure of a public scheme for the Atlantic region are developed, reliable market rates for real estate in various areas within the Atlantic region could be utilized with valid assumptions on required space (square footage).

C. Initial Capital

In the private systems, insurers operate with capital to support their operations, on average at a ratio of $1 of capital for every $2 of premium. This capital is used to support the insurance operation, in the event the premiums are insufficient to pay the claims and expenses. In the case of the public systems, different names are attached to the capital fund, and the purposes may be more limited than the more rigorous standards applied to each individual insurer. The following is a brief discussion of the observations of the initial capital for a public automobile system and current capital levels.

1. British Columbia:

In the 2002 Annual Report, ICBC has a premium base of $2.7 billion, while its retained earnings (i.e., capital) are $314 million. This is significantly lower than the 2/1 ratio for premiums to capital for the private sector insurer. In its 2002 Annual Report it states:

> ***"Capital Levels: As a crown corporation supported by government's financial guarantee, ICBC is able to operate with lower levels of capital, as compared to industry standards. The adequacy of [claim] reserve levels is a measure of solvency and is intended to protect the policyholders in the event of unexpected losses from unusual event... ICBC is therefore planning to achieve reasonable levels of net income over the next few years to rebuild retained earnings and strengthen the corporation's financial position."***

There is no evidence of any initial capital used in the first three years of ICBC's operation, however in its fourth year, 1977, it established a Rate Stabilization Fund and Catastrophe Fund by appropriated monies from surplus and retained earnings. However, these two Funds were not specified in the 2002 Annual Report.

2. Saskatchewan:

SGI has a Rate Stabilization Reserve that is held on behalf of Saskatchewan's motoring public and is not used for the payment of any general dividends. The Rate Stabilization Reserve was $2.8 million as at December 31, 2002, while premiums written for the year were $486 million. SGI purchases reinsurance coverage for its exposure to losses arising from catastrophic events.

3. Manitoba:

In the initial years of operation, there is no evidence of any initial capital established for MPI. However, as described in the 2002 Annual Report, MPI has retained earnings of $74 million and $82 million as a rate stabilization fund; a total of $156 million. In 2002, MPI's written premium volume is $160 million. It can be estimated that MPI has an approximate $1 of premium to every $1 of capital.

4. Québec:

A stabilization reserve was created at the end of 1979-80 by surplus revenues over expenditures and by the actuarial adjustment of the actuarial liability.

Belleau notes that from 1983 onward SAAQ has paid substantial monies into it despite the fact that it has had to dig into the reserve from 1983 onward to compensate for operational deficits[226]. Belleau reports that the Government has drained funds from this stabilization reserve first in 1987 for improvement of road safety, then to contribute to the cost of ambulance transportation in 1990, then in 1992 and again in 1993.

SAAQ took the position that the stabilization reserve and interest belonged to the insureds and should be returned to them. A class action was launched on behalf of insureds and to invalidate all previous drains between 1987-93. The Superior court upheld the action but the court of appeal quashed the decision on the basis that the SAAQ reserves were the property of the public domain and the payments to the consolidated revenue fund could not be considered expropriation without indemnity. Leave to appeal to the Supreme Court of Canada was refused in March 1997. It has been reported that the Québec government has withdrawn the rest of stabilization reserve since this decision.

5. Summary of Initial Capital

While private insurers generally have capital levels at $1 for every $2 of premium, this rule of thumb has not applied to public entities. With the exception of Québec, in the early start-up years a capital fund was not established for the crown corporations. However over time, a capital fund has been established, sometimes labeled rate stabilization or simply retained earnings.

IBC, in its reports on the Case for Competition prepared in 2003 for each of the four Atlantic Provinces has assumed the government entities will need to immediately provide a capital level at $1 for every $2 of premium. For the Atlantic region, IBC suggested the initial capital would total approximately $500 million, with the assumption of $1 billion in premium revenue. That calculation appears conservative compared to ICBC with $2.7 billion in premiums, while its capital (retained earnings) is $314 million.

If the Atlantic Provinces form a public insurer like ICBC, they could consider a government guarantee in lieu of establishing a large capital reserve at the time of start-up. In addition, if a capital reserve fund is to be part of an initially established Atlantic public automobile system, it could be at a level similar to that of ICBC or Saskatchewan (that is to say, a reserve comprised of less than $1 capital for every $5 to $10 of premium).

Finally, in the private sector, investors of the capital require a return on equity (ROE) of their capital. Insurers typically target a pre-tax ROE of 15-19%; and premiums include a loading of approximately 5-7%, and sometimes higher, to attain this ROE target. In a public corporation, similar ROE targets are not set, and hence profit loadings in the range of 5 to 7% are not added to the crown corporation's premium levels and represent a cost savings to the premium model.

However, if the crown corporation wants to build its retained earnings (in the form of a rate stabilization fund) it may consider adding a modest cost onto the premium such as 1%- 2% profit load.

D. Operating Expenses

The design of the product for delivering the desired insurance benefits to consumers in the Atlantic Provinces will dictate the loss component of the premiums. Whether the provider of the product is public or private will not materially affect the losses that are used to develop the premium level. If a product is selected that will have long-run stability in claim costs, there will be long-run stability of premiums.

Premiums are comprised of losses, expenses and profit. While controlling losses (claims) is a function of the product design, not the provider, the expenses and profit margins do vary considerably between the private and public providers of insurance.

The operating expenses are comprised of three main components:

- Acquisition costs
- Premium Taxes
- General Expenses (underwriting and overhead)

In the private schemes the overall expense ratios are considerably higher than in the public systems. The most recent data compiled by IBC for 2001 indicates the average expense ratio in Canada for automobile private systems is 24%, and has dropped in recent years. Part of the decline is due the entry of direct writers with lower acquisition costs, and partly due to more efficient operations. The public insurers have substantially lower expense ratios. In the ICBC 2002 annual report, its operating expense ratio is 15.4%. SGI, in its 2002 annual report lists its expenses at $77 million on a written premium base of $486 million, a 15.8% expense ratio.

Contrary to the statement in the The Case For Competition, that government run automobile insurance schemes do not pay premium taxes (Appendix B), both ICBC and SGI pay premium taxes, with SGI's rate at 5% and ICBC at 4%. Most provinces have a premium tax rate of 3% which private insurers include when estimating premium levels. If it were determined to exempt an Atlantic government-run automobile scheme from premium taxes, that effect would reduce the premium levels, while at the same time reducing the government tax revenue. Such a decision would be influenced by the macro-economic implications of this change in tax revenue base in contrast to the reduced premium levels to consumers. This change is not dependent upon a public versus private scheme, and could be increased or reduced at any time.

Most of the expense ratio difference between the public versus private sector insurers is attributable to the acquisition costs. With few exceptions, brokers are paid a commission of 12.5% of the automobile premium, and often receive additional incentive compensation. With the entry of direct writers, the acquisition costs are lower for direct writers (who use salaried employees), but a large portion of the marketplace is serviced by brokers. In the case of ICBC, in its 2002 Annual Report, its acquisition cost ratio is 7.3%. SGI, in its 2002 Annual Report lists its "issuer fees" as $15.4 million on a written premium base of $ 486 million; a 3.2% acquisition cost ratio. Unlike premium taxes, it would be difficult to reduce the acquisition costs unless a public scheme for automobile is in place. A reduction of 5% or more on acquisition cost could introduce significant cost savings to consumers. While insurance brokerage employees, who are generally salaried employees of the broker, may be able to shift employers (i.e., to government), it would be the owners of the brokerage who would be most affected economically by this change.

Finally, a comparable general operating expense ratio for the government run schemes is difficult to quantify, ICBC lists its cost of running ICBC at 5%; while industry averages for the private sector are in the 8 to 10% range.

E. Conclusion

As to the issue of start up costs, for an Atlantic Canada public auto insurance scheme, it was not possible to undertake a thorough and proper evaluation of this question. The current cost projections prepared by the Insurance Bureau of Canada for the individual Atlantic Provinces in August, 2003 were reviewed and some objective actuarial analysis of those projections was sought. Some information was received from the public models in Canada as to their initial start up costs, but it was not sufficiently detailed or current. Time and data reliability have not permitted a thorough analysis of the comparable costs however an estimated range of start-up expenses for an Atlantic Canada public auto insurance scheme from $54 million to $88 million with possible additional funds for land and buildings and initial contingency capital seems reasonable.[227].

X. COMPARATIVE COSTING OF ALTERNATIVE PRODUCT SCENARIOS FOR ATLANTIC CANADA

A. Description of Product Scenarios

Four scenarios have been presented for high level costing and to provide a relative magnitude among the three alternatives being considered at this time.

The first scenario considers a restricted tort benefit structure with caps of $2,500 not indexed for inflation up to a verbal threshold for serious and permanent injury and a minimum no fault benefits as currently prescribed, delivered by the private enterprise supply system now in place in the Atlantic Provinces.

The second scenario considers the same model delivered as in Scenario 1 above, but delivered by a government monopoly supplier.

The third scenario considers a benefit structure that provides typical no fault accident benefits but as an extra priced option to basic insurance, (on the rationale that in current Canadian auto insurance schemes, such benefits are not primary and as such are purchased twice by some Canadians with potentially no realistic benefits, absent at fault traffic injury) and eliminates all tort recovery for pain and suffering up to the verbal threshold for serious and permanent injury.

The fourth scenario considers the same model delivered in Scenario 3, but delivered by a government monopoly supplier.

The costing prepared by Exactor Insurance Services ("Exactor") and KPMG which estimated the potential savings for a restricted benefit structure with caps of $2,500 not indexed for inflation up to a verbal threshold for serious and permanent injury for the province of New Brunswick have been reviewed. Exactor's report was prepared on behalf of IBC, while KPMG's report was prepared on behalf of the New Brunswick Department of Justice. No independent study of the closed claims data, upon which the Exactor and KPMG findings are based, has been done. Apparently, similar cost savings were estimated by KPMG for Nova Scotia, however, that report has not been reviewed. For purposes of providing the relative magnitude among these three scenarios, on an interim basis, it is assumed that the findings for New Brunswick would be generally similar in the other Atlantic Provinces.

B. Summary of Findings in Exactor and KPMG Studies:

To perform the study(s), in simple terms, the following steps were taken:

Steps	Exactor	KPMG
1. Estimated Ultimate Loss per vehicle (all)	$913	$1,104
2. Portion of claims meeting verbal threshold	18.24%	7% #
3. Savings due to claims below verbal threshold	16.6%**	20.5%
4. New Product Loss cost/vehicle	$761	$878
5. New required premium at 10% ROE assumption	NA	$1,221*

Notes to table:

*: Two estimates were provided: $1,221 & $1,247
#: 64 of the 920 closed claim files
**: 15% when including fixed expenses; KPMG assumes all expenses are on a percentage basis, while Exactor has refined its expenses into a fixed and variable portions.

As can be seen from the above table in Step 1, the starting point for estimating the loss component of the premium is dramatically different between these two studies. KPMG estimate ($1,104) is more than 20% higher than the Exactor estimate ($913) of ultimate losses per vehicle. This higher starting point estimated by KPMG leads to a higher estimated dollar savings in premium than would otherwise be estimated.

The second major difference is in the assumption of what percentage of claims will meet the threshold to be eligible for pain and suffering beyond the $2,500 cap. KPMG assumes fewer victims will be eligible for pain and suffering beyond the $2,500 cap, and excludes more victims than Exactor excluded, such as victims with amputation and weight bearing fractures. Secondly, Exactor assumes that all the victims below the threshold will receive $2,500, whereas KPMG treats the $2,500 as a limit. The third difference in underlying assumptions is KPMG assumes a small erosion factor, however, it still excludes more claimants from the threshold than Exactor. As a result of these differences in assumptions, KPMG estimates that roughly 93% of the claims will be subject to the $2,500 cap, whereas Exactor assumes roughly 80%.

C. Premium Savings Estimates

In summary, the reports prepared by KPMG and Exactor range from a savings (on an all coverage basis) of 15% to 20%. It is assumed here that similar type savings would be estimated for the other provinces with the same underlying assumptions. Unless the types of claims eligible for full pain and suffering compensation are clearly specified in legislation, it is difficult to accurately estimate how many claims will receive full compensation and how many will be subject to a cap. For the purposes of estimating the cost savings for **Scenario 1**, this report adopts a mid point in the range, that is 17.5%, as a reasonable approach.

Scenario 2 would include the same cost savings presented in Scenario 1 above, plus the additional cost savings for lower expense and profit margins assumed to exist under a government monopoly.

Ignoring the start-up costs of moving to a government monopoly scheme, and any macro economic costs due to such a change, premiums provided by a government monopoly could be lower than through the private sector due to lower expenses and profit margins. The savings will vary depending upon the decision made by the provinces, such as acquisition methods and fees, profit targets (if any), and organizational operating structure of the monopoly. However, it is not unreasonable to assume that changes to the expense and profit structure of the premium model could bring about savings of at least 10%. This savings, combined with the $2,500 cap described above, would result in an approximate total savings of 27%.

Scenario 3 has two components to consider. One is the savings by eliminating all pain and suffering compensation for those below the threshold. The second element is the impact of making accident benefits optional.

Based on the assumptions provided in the study prepared by Exactor, if all claimants below the threshold did not receive any compensation for pain and suffering, the savings on losses estimate prepared by Exactor of 16.6% would increase to 20.6%. On a premium basis, the 15% savings estimated by Exactor would increase to 18.7%; an additional 3.7 percentage point savings.

Regarding the second component, if accident benefits is made optional, only those who require the coverage can afford it, will purchase the coverage. As the details of this coverage varies among the four provinces, more specific details on the benefits to be provided are required to make any cost estimates of changes to an optional system.

Without recognition for the impact of changes to the accident benefits regime, the savings for **Scenario 3**, provided by private insurers could result in a savings of approximately 21%; that is, an additional 3.5 percentage points over **Scenario 1**. As a comparison, with a government supplier, making similar assumptions as noted above for **Scenario 2**, the approximate overall savings would be 30%, and is labeled **Scenario 4**.

Close analysis was given to the circumstances leading to the creation of Crown corporations in British Columbia, Saskatchewan, Manitoba and Quèbec, and the actual reported information as to the start up costs, transition issues and costs with a view to determining what specific cost savings could be attainable by converting the existing private enterprise delivery schemes in each of the Atlantic provinces to one or a series of Crown Corporations. The costings provided by IBC as well as the careful and extensive considerations of the Ontario study, the Alberta and Queensland studies were reviewed. The difficulties in attempting cost comparisons of this type specifically referenced in the 1996 British Columbia study by reason that the information from the public models in Canada are not in the public domain were noted. Ultimately, the exercise is difficult and inexact, at best and possibly unhelpful or misleading at worst. Under the timeline and information constraints, it was possible to provide general projections only of the premium saving to be achieved by a conversion to a public scheme.

With that qualifier, the Task Force did conclude that the premium saving to be achieved by a conversion to a public scheme similar to the savings in expense and profit margins experienced in the other public schemes would be possible, and in the short term would amount to about 10% of the premium as illustrated between Scenario 1 and 2 and between Scenario 3 and 3b as a preliminary assessment in the Table 1 below[228].

Per $100 premium	Current Base	Scenario 1	Scenario 2	Scenario 3	Scenario 3B
Relative Cost	$100	$82	$73	$79	$70
Supplier		Private	Government	Private	Government

Concluding Note

The work for this report was undertaken between August 9 and September 25, 2003. This report has attempted to provide a thorough, current examination and objective review of considered evaluations and studies of automobile insurance models in Canada and comparable jurisdictions for the purpose of providing to the Atlantic Canada Insurance Harmonization Task Force with reliable factual data upon which it could complete the work contained in its terms of reference and provide a report to the Atlantic Premiers. This report provides a general explanation of the components of automobile insurance delivery systems, the issues surrounding the issue of who should supply the mandatory automobile insurance product and what should comprise the components of that product. The report has attempted to capture information from models outside of Canada for comparison purposes

Efforts were made to obtain recent and detailed information about the internal operations of the public automobile insurance delivery systems in Canada with a view to providing comparative data by which to consider costing issues for a public supply model for Atlantic Canada. Due to time and seasonal restraints, the data obtained was not complete nor in all cases verifiable. The cost projections included in this report with respect to a common Atlantic Provinces automobile insurance system were subject to the foregoing constraints and were not capable of substantiation actuarially. For these reasons, the reporting on the issue of costing must be considered to be of an interim nature only.

It is intended that this report would allow the Atlantic Canada Task Force to differentiate the facts from the social, economic and political policy choices required to be made among competing goals of traffic accident compensation law and in turn to help advance the public understanding of the choices and trade-offs that must be confronted.

The author wishes to express gratitude to the members of the Atlantic Canada Harmonization Task Force, whose direction and support made this endeavor possible.

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Endnotes

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[2] Report of the Committee of Inquiry on Automobile Insurance Government of Québec 1974 ("the Gauvin Report").

[3] The Honourable Mr. Justice Coulter Osborne, Report of Inquiry into Motor Vehicle Accident Compensation in Ontario, Published by the Ontario Ministry of the Attorney General and the Ministry of Financial Institutions, Queen's Printer for Ontario, February, 1988 ("the Osborne Report").

[4] Report of the Autopac Review Commission, September, 1988 ("the Kopstein Report").

[5] A Study of Premium Stability In Compulsory Automobile Insurance by the Alberta Automobile Insurance Board for the Minister of Consumer and Corporate Affairs of the Government of Alberta, September 12, 1991 ("the AAIB Report").

[6] Review of the NSW Motor Accidents Scheme, for the Board of Motor Accidents Authority, Ernst & Young, November, 1998 ("the Ernst & Young Report").

[7] Review of the Queensland Compulsory Third Party Insurance Scheme October 1999 ("the Queensland Review").

[8] ICBC - Nick Geer; MPI - Barry Galenzoski, Brian Geary, Don Palmer; SGI - Tim Mcleod: SAAQ-Wayne Scallion, François Remillard, Linda Bellware.

[9] The Osborne Report, supra n 3 p 510.

[10] In Victoria, the State Government underwrites the scheme through the Transport Accident Commission, which also manages claims. In South Australia, the State Government underwrites the scheme through the Motor Accident Commission which outsources the claims management function. In Western Australia, the State Government underwrites the scheme through the Insurance Commission of Western Australia. In Tasmania, the State Government underwrites, administers and manages claims through the Motor Accidents Insurance Board, and in the Northern Territory the same occurs through the Territory Insurance Office's Motor Accidents Compensation Authority. Fronsko, A.L., 2001. "No-Fault V. Common Law: 75 Years of Debate, incorporating an Overview of Australian Compulsory Third Party (CTP) Insurance Schemes", Melbourne, Victoria Appendix 1, p 53-4.

[11] Insurance Corporation of British Columbia (ICBC), Saskatchewan Government Insurance (SGI), Manitoba Public Insurance Corporation (MPI) and Societé d'assurance automobile de Québec (SAAQ).

[12] Queensland had a duopoly from the late 1960s until 1992 with one private sector underwriter and the then State Government Insurance Office ("SGIO") until SGIO was sold and then became privately owned as Suncorp Metway. "Motor Accidents: the Act and background papers" © Crown 1989 Stateprint NSW Government Printing Office.

[13] In the Australian Capital Territory, the NRMA Insurance Limited underwrites the scheme and manages claims as a monopoly provider: Fronsko, A.L. 2001. "No-Fault V.

Common Law: 75 Years of Debate, incorporating an Overview of Australian Compulsory Third Party (CTP) Insurance Schemes", Melbourne, Victoria, Appendix 1 supra n 10, p 54.

[14] Motor Accidents: the Act and background papers © Crown 1989 Stateprint NSW Government Printing Office.

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[21] The Osborne Report supra n 3 p 658.

[22] The Osborne Report supra n 3 p 458 and 461.

[23] The Wooton Report supra n 1 at p 729.

[24] The Wooton Report supra n 1 at p 729.

[25] The Wooton Report supra n 1 at p 491.

[26] The Case for Public Insurance MPI p 3.

[27] The Report of the Manitoba Automobile Insurance Committee 1970 p 26.

[28] The Report of the Manitoba Automobile Insurance Committee 1970 p 26.

[29] The Gauvin Report supra n 2 p 227.

[30] Belleau supra n 18 p 76.

[31] Belleau supra n 18 p 77.

[32] Belleau supra n 18 p 75.

[33] The Osborne Report supra n 3 p 659.

[34] The Osborne Report supra n 3 p 662-3.

[35] The Osborne Report supra n 3 p 665.

[36] The Osborne Report supra n 3 p 668.

[37] The Osborne Report supra n 3 p 671.

[38] The Osborne Report supra n 3 p 672.

[39] The Osborne Report supra n 3 p 675.

[40] The Osborne Report supra n 3 p 681.

[41] The Osborne Report supra n 3 p 684.

[42] The Osborne Report supra n 3 p 686.

[43] The Osborne Report supra n 3 p 687.

[44] The Osborne Report supra n 3 p 689.

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[45] The Osborne Report supra n 3 p 694.

[46] The Osborne Report supra n 3 p 695.

[47] The Osborne Report supra n 3 p 696.

[48] The Osborne Report supra n 3 p 700.

[49] The AAIB Report, supra n 5 Vol 2; A Review of Options For Reform of the Alberta Auto Accident Compensation Regime by Michael J. Trebilcock and Bruce Chapman, Faculty of Law University of Toronto, 30 August, 1991 p 5 ,The AAIB Report Vol 2 Appendix 6 p 1-272 ("Trebilcock Report").

[50] Rose Ann Devlin, Liability Versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Québec, Ph.D. Thesis, University of Toronto,1988, 170-86,194-201. Rose Ann Devlin, " Liability versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Québec" (26 October 1988b),University of Toronto Law and Economics Workshop, 19-26 "Devlin (1988a) at 257".

[51] "Motor Vehicle Insurance in British Columbia at the Crossroads", Vol 1: The Case for Change, Vol. 2: Options and Choices, Dec.19, 1996, KPMG; Exactor Services Inc., Eckler Partners Ltd. ("the KPMG Report").

[52] The KPMG Report supra n 51 11-18.

[53] The KPMG Report supra n 51 II-34.

[54] The KPMG Report supra n 51 II-11.

[55] The KPMG Report supra n 51 II-13.

[56] © Jan. 2003, ICBC Learning & Development Insurance Education Autoplan Essentials-Rel 55.

[57] © Jan. 2003, ICBC Learning & Development Insurance Education Autoplan Essentials-Rel 55.

[58] The Osborne Report supra n 3 p 669.

[59] The Osborne Report supra n 3 p 670.

[60] The Osborne Report supra n 3 p 669.

[61] The Osborne Report supra n 3 p 670.

[62] The KPMG Report supra n 51 II-23.

[63] The KPMG Report supra n 51 II-25.

[64] The Wooton Report supra n 3 p 710.

[65] The Wooton Report supra n 1 p 711.

[66] The Wooton Report supra n 1 p 712.

[67] The Wooton Report supra n 1 p 713.

[68] The Wooton Report supra n 1 p 713.

[69] The Wooton Report supra n 1 p 714.

[70] The Wooton Report supra n 1 p 714.

[71] The Wooton Report supra n 1 p 714.

[72] The Osborne Report supra n 3 p 715.

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[73] The Osborne Report supra n 3 p 716.

[74] The Osborne Report supra n 3 p 720.

[75] The Osborne Report supra n 3 p 729.

[76] The Osborne Report supra n 3 p 730.

[77] The Osborne Report supra n 3 p 731.

[78] The Osborne Report supra n 3 p 732.

[79] The Osborne Report supra n 3 p 734.

[80] Statistics Canada Consumer Price Index Monthly CPI Release.

[81] The AAIB Report supra n 5 Vol 2 Appendix 6 Trebilcock Report p 5 – 12.

[82] The Osborne Report supra n 3 p 449.

[83] The Osborne Report supra n 3 p 451.

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[85] The AAIB Report supra n 5 Vol. 1 p 94.

[86] The Kopstein Report supra n 4 p 90.

[87] The Kopstein Report supra n 4 p 91.

[88] The AAIB Report supra n 5 Vol. 1 p 96.

[89] The AAIB Report supra n 5 Vol. 1 p 97.

[90] The Trebilcock Report, supra n 49 p 43.

[91] The AAIB Report supra n 5 Vol. 1 p 98; The Trebilcock Report, supra n 49 p. 212 – 213.

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[96] The AAIB Report supra n 5 Vol. 1 p 100.

[97] The AAIB Report supra n 5 Vol. 1 p 100.

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[99] The Trebilcock Report, supra n 49 p153.

[100] A study of New Zealand and Australian states and territories, from 1970-81 found no appreciable effect on traffic fatalities relative to the tort system. R. Ian McEwin, "No-Fault and Road Accidents: Some Australasian Evidence" (1989), 9 International Review of Law and Economics 13; The Trebilcock Report supra n 49 p 153.

[101] The Trebilcock Report, supra n 49 p156-7.

[102] The Trebilcock Report, supra n 49 p158.

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[103] The Trebilcock Report, supra n 49 p160.

[104] The Trebilcock Report, supra n 49 p160.

[105] The Trebilcock Report, supra n 49 p160-162.

[106] The Trebilcock Report, supra n 49 p162-163.

[107] The Trebilcock Report, supra n 49 p168-169.

[108] "Regulatory Negotiation In Automobile Insurance Reform" Shelley L. Miller, Q.C. © Risk Management and Insurance Review, 2001, Vol. 4, No. 1, 53-66, p 64.

[109] Review of the Exercise Of The Functions Of The Motor Accidents Authority And Motor Accidents Council, Second Report February 2001 at p 38.

[110] The Osborne Report supra n 3 p 466.

[111] The Osborne Report supra n 3 p 468.

[112] The Osborne Report supra n 3 p 468.

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[114] The KPMG Report supra n 51 II-28-30.

[115] The KPMG Report supra n 51 II-11.

[116] The KPMG Report supra n 51 II-28.

[117] The KPMG Report supra n 51 II-28.

[118] The KPMG Report supra n 51 II-29.

[119] The AAIB Report, supra n 5 Vol 1; p 104.

[120] The AAIB Report, supra n 5 Vol 1; p 105.

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[127] The AAIB Report, supra n 5 Vol 1; p 112.

[128] Yeh and Schmit, supra n 125 at p 27-31.

[129] The AAIB Report, supra n 5 Vol 1; p 107.

[130] Marc Gaudry, "The Effects on Road Safety of the Compulsory Insurance, Flat Premium and No fault features of the 1978 Québec Automobile Act, in Osborne Vol II, p

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26, note 1) in The AAIB Report Vol 2 Appendix 6 ("Gaudry"); Rose Ann Devlin, Liability Versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Québec, Ph.D. Thesis, University of Toronto,1988, 170-86,194-201. Rose Ann Devlin, " Liability versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Québec" (26 October 1988b),University of Toronto Law and Economics Workshop, 19-26 ("Devlin").

[131] Gaudry, supra n 130, p. 199.

[132] By causing the premiums of high-risk drivers to rise by about 1 percent, flat-rates would be expected to increase the relative proportion of high-risk drivers among the total driving population, and thus to increase the number of fatal accidents. Devlin, supra n 130 at 15, 22.

[133] Craig Brown, "Deterrence in Tort and No-Fault: The New Zealand Experience" (1985), 73 California Law Review, 983

[134] McEwin, supra n 100.

[135] Slater (1986) 322, 334. Duff A,33.

[136] The former regime was based on quasi-delict in civil law, the same or more fault based than a pure tort model. The Trebilcock Report supra n 47 p 210.

[137] The Trebilcock Report, supra n 47.

[138] Vehicle damage claims remain outside the Québec plan and are administered by the private sector. These claims have been removed from the court system because of the statutory provision that the insured is compensated for his or her property damage by his or her own liability insurer who indemnifies him or her directly under the liability section of the policy, to the extent that the insured is not responsible for the accident. Fault is determined by an internal insurance fault schedule. Before fault is determined through the fault chart, insurers have to determine how an accident occurred. The Trebilcock Report, supra n 49 p 210, FN 32.

[139] The AAIB Report, supra n 5 Vol 1; p 109.

[140] The Trebilcock Report, supra n 49, p 212.

[141] The Osborne Report, supra n 3 p 523.

[142] The Osborne Report, supra n 3 p 522-25.

[143] The Trebilcock Report, supra n 49 p 214.

[144] AAIB Report, supra n 5 Vol 1; p. 99; The KPMG Report, supra n 51 II-9-10.

[145] The Trebilcock Report, supra n 49 p 215; Devlin, supra n 50 at 59-68.

[146] The AAIB Report, supra n 5 Vol 1; p 114-116.

[147] The Queensland Review supra n 7 p 56.

[148] GIO was divided into two parts, one of which was renamed Insurance Commission of WA and retained control of compulsory auto insurance. In SA, a Motor Accident Commission (MAC) was created which gave the management contract to the purchaser of SGIO (NRMA). The MAC had a staff of less than 20 and was responsible to buy and control the outsource services and manages Compulsory Third Party Fund. In South Australia ("SA"), a Premium Committee determines the premium. Its scheme allows only limited risk rating but community rating is the norm. Cross subsidization

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occurs, but it keeps insurance prices affordable. As of June 1989, the future estimated unfunded liabilities were close to $2 billion. Survey for Insurance Bureau of Canada - January 2002 Shelley L. Miller, Q.C.

[149] Motor Accidents: the Act and background papers © Crown 1989 NDE Government Printing Office.

[150] Motor Accidents: the Act and background papers © Crown 1989 NDE Government Printing Office.

[151] Motor Accidents: the Act and background papers © Crown 1989 NDE Government Printing Office.

[152] The Ernst & Young Report, supra n 6.

[153] The Ernst & Young Report, supra n 6.

[154] In 1998, five studies of the scheme were conducted including the National Competition Policy Review, The Final Report on the Inquiry into the Motor Accident Scheme of the Standing Committee on Law and Justice, "Claiming Under the Motor Accidents Scheme" by the Justice Research Centre, "Exploration of Awareness and Attitudes Towards the Current CTP Scheme and its potential Alternative" (the Woolcott Report), and the Review of the New South Wales Motor Accidents Report (the Ernst & Young Report) *Transaction cost and governance engineering in motor accident insurance scheme design: A New South Wales experiment*, Shelley L. Miller, Q.C., 2000 ILJ 1.

[155] The Ernst & Young Report, supra n 6.

[156] The Ernst & Young Report, supra n 6.

[157] *Transaction cost and governance engineering in motor accident insurance scheme design: A New South Wales Experiment*, supra n 154.

[158] Parliamentary Debates (Hansard) Fifty-Second Parliament First Session, 3 June, 1999 at 2-6.

[159] The Queensland Review supra n 7 p 92.

[160] The Queensland Review supra n 7 p 99 and Graph 3 page 89.

[161] The KPMG Report, supra n 51 II-35.

[162] The KPMG Report, supra n 51 VII-14.

[163] The KPMG Report, supra n 51 VII-14.

[164] Email from Heather Evans, Melbourne, Victoria, September 4, 2003.

[165] Summary of the findings of Robert Goseltine prepared January 19, 1974.

[166] The Wooton Report, supra n 1 p 84.

[167] The Wooton Report, supra n 1 p 563.

[168] Accident Benefits Schedule © Jan 2003 ICBC Learning and Development Insurance Education – Autoplan Essentials Rel 55.

[169] ICBC Learning & Development Insurance Education Autoplan Essentials, supra n 155.

[170] "A History of SGI", published by Printwest, Regina, December 1995 – Celebrating our Fiftieth Year).

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[171] A History of SGI supra n 170 p 6.

[172] A History of SGI supra n 170 p 23.

[173] A History of SGI supra n 170 p 26.

[174] A History of SGI supra n 170 p 26.

[175] The KPMG Report, supra n 51 p II-27.

[176] The Report of the Manitoba Automobile Insurance Committee 1970 at p 25.

[177] The Case for Public Insurance MPI p 3.

[178] The Case for Public Insurance MPI p 3.

[179] A History of SGI supra n 170 p 13.

[180] The Case for Public Insurance MPI p 2.

[181] The Manitoba Public Insurance Corporation Report October 31, 1971, p 1.

[182] Email from Brian Geary, Customer Communications Manager August 14, 2003.

[183] The Kopstein Report supra n 4 p 90.

[184] The Kopstein Report supra n 4 p 92.

[185] The Kopstein Report, supra n 4 p II-25.

[186] The KPMG Report, supra n 51 p II-25.

[187] The Gauvin Report, supra n 2 p 218.

[188] The Gauvin Report, supra n 2 p. 220.

[189] The Gauvin Report, supra n 2 p 223.

[190] The Gauvin Report, supra n 2 p 311.

[191] Belleau, supra n 18 p 81.

[192] Belleau, supra n 18 p 82.

[193] Belleau, supra n 18 p 82.

[194] Belleau, supra n 18 p 85.

[195] Belleau, supra n 18 p 87.

[196] Belleau, supra n 18 p 87.

[197] Belleau, supra n 18 p 88.

[198] Belleau, supra n 18 p 91.

[199] Belleau, supra n 18 p 94.

[200] Belleau, supra n 18 p 34.

[201] The Addie Report, supra n 16 p. 14.

[202] British Columbia and Tort Reform, Tillinghast-Towers Perrin report, Dec. 1996 in the KPMG Report, supra n 51 II-31

[203] The KPMG Report, supra n 51 p 10.

[204] The KPMG Report, supra n 51 p 14.

[205] The KPMG Report, supra n 51 p 14.

[206] The KPMG Report, supra n 51 p 18.

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[207] The KPMG Report, supra n 51 p 19.

[208] The KPMG Report, supra n 51 p 19.

[209] The KPMG Report, supra n 51 p 20.

[210] The KPMG Report, supra n 51 p 22.

[211] The KPMG Report, supra n 51 p 27-8.

[212] The KPMG Report, supra n 51 p 39.

[213] The KPMG Report, supra n 51 p 40.

[214] The KPMG Report, supra n 51 p 40.

[215] Because information was not available from plaintiffs' lawyers, these data could not be accurately captured. It was noted that about 35% of claimants retain lawyers on a contingency fee basis. Nevertheless the report estimated the amount of plaintiff legal costs assuming 28% of the bodily injury award was paid as contingency fees. Such calculation was expressed to be conservative, considering the maximum permitted contingency fee in British Columbia was 331/3%. The KPMG Report supra n 51 Exhibit III-3.

[216] The KPMG Report, supra n 51 p 44.

[217] The KPMG Report, supra n 51 II-37.

[218] The KPMG Report, supra n 51 II-11.

[219] The KPMG Report, supra n 51 II-34.

[220] The KPMG Report, supra n 51 II-35.

[221] Belleau, supra n 18 p 170.

[222] *Effect of Eliminating Compensation on the Outcome of Insurance Claims for Whiplash Injury* Dr. David Cassidy, The New England Journal of Medicine 342(16) 20 April 2000 pp. 1179-1186, 1211-1213

[223] *Prediction of Vocational Status Three to Four Months After Treated Mild Traumatic Brain Injury* Chris Paniuk, PhD Journal of Muscloskeletal Pain, Vol 8 (1/2) 2000

[224] *2001 Volvo Award Winner in Clinical Studies: Effects of a Media Campaign on Back Pain Beliefs and Its Potential Influence on Management of Low Back Pain in General Practice* Rachelle Buchbinder, MBBS (Hons) MSc. FRACP Spine Volume 26 Number 23, pp 2535-2542 (c) 2001

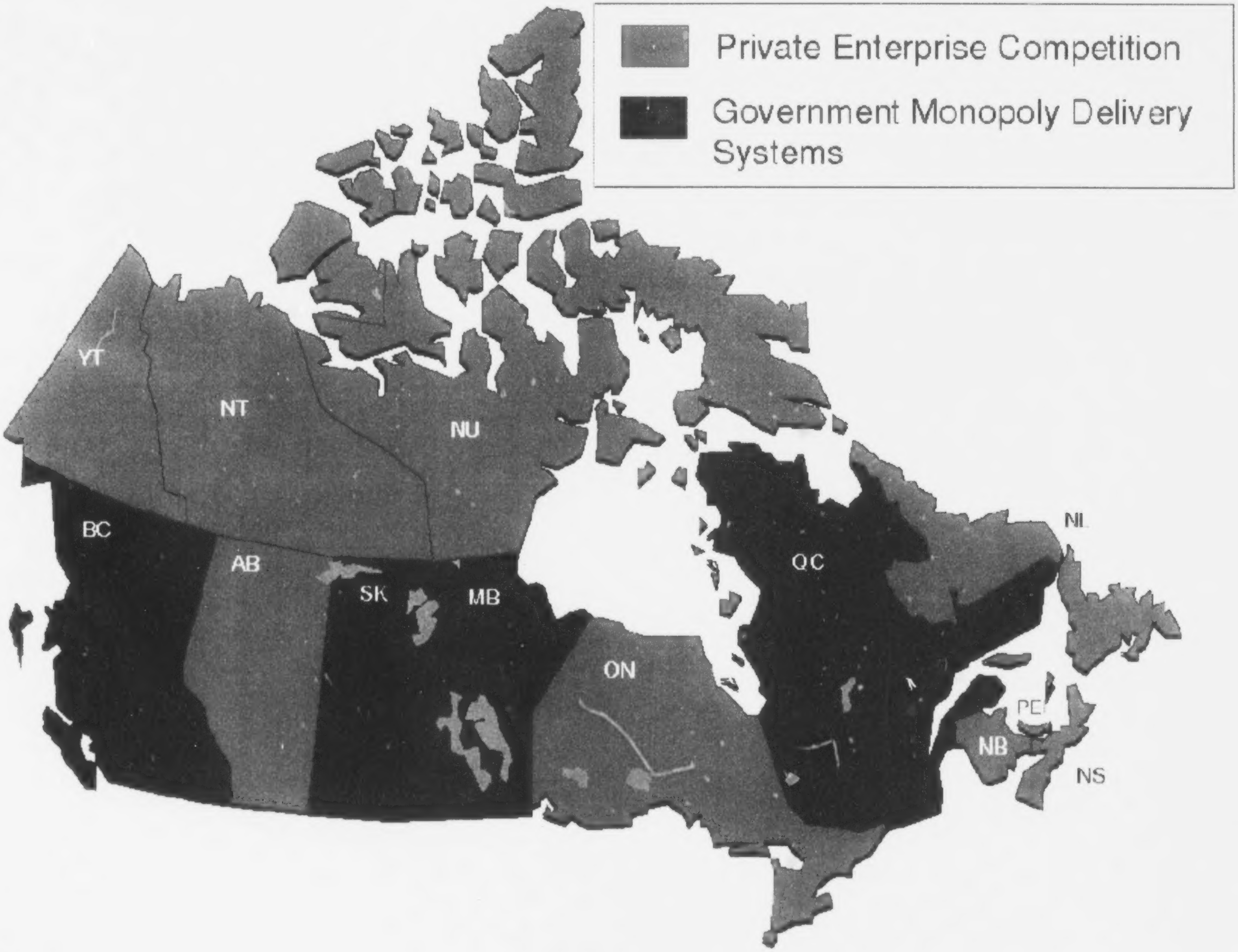
[225] Auto Insurance in New Brunswick: The Case for Competition, August 2003, Insurance Bureau of Canada, Halifax, Nova Scotia

[226] Belleau supra n 18 at p 146

[227] Calculated with assistance from Paula Elliott, Mercer Oliver Wyman.

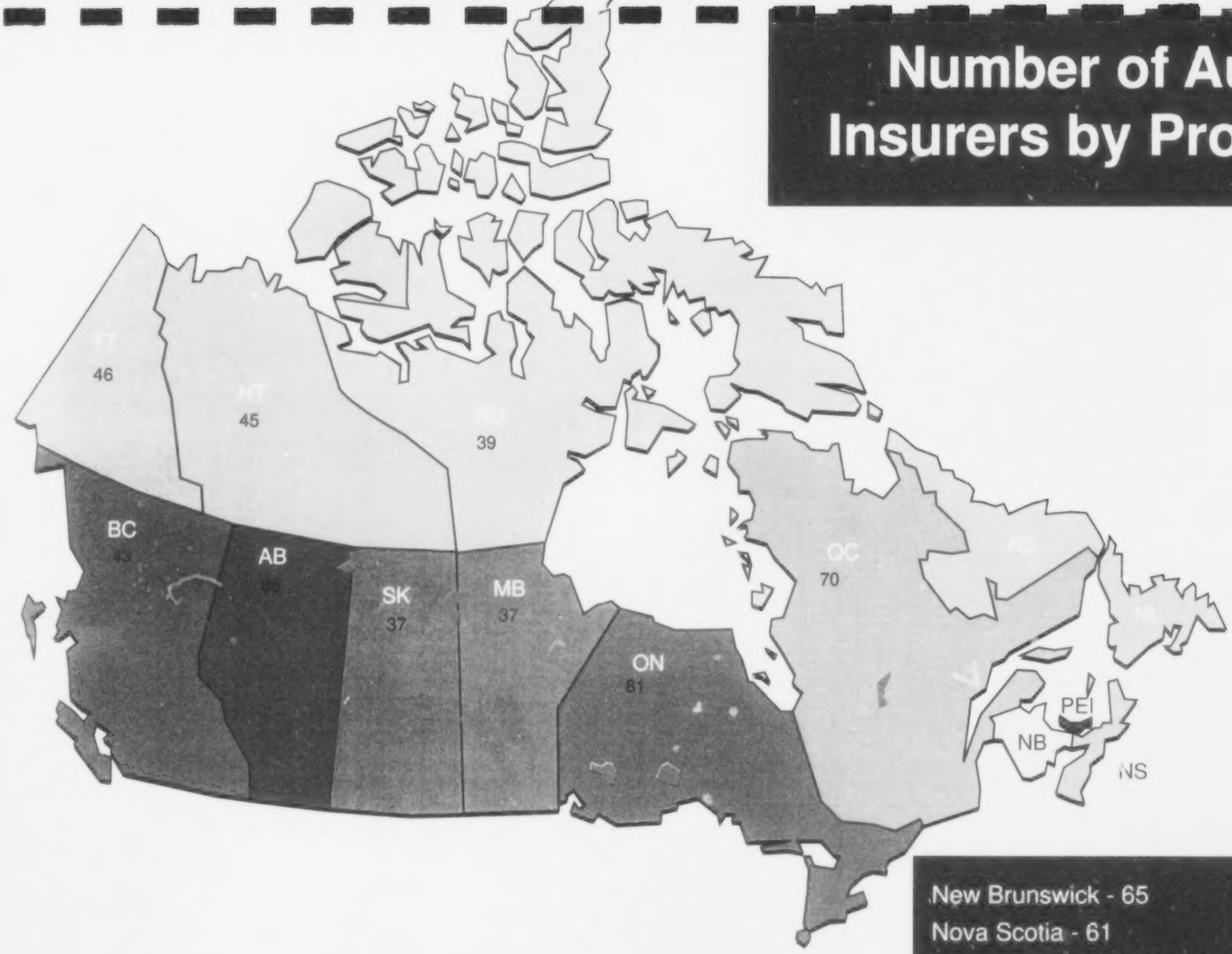
[228] Calculated with assistance from Paula Elliott, Mercer Oliver Wyman.

GRAPHS


Private Enterprise Competition
Government Monopoly Delivery Systems
YT
NT
NU
BC
AB
SK
MB
ON
QC
NL
PEI
NB
NS

Graph 1

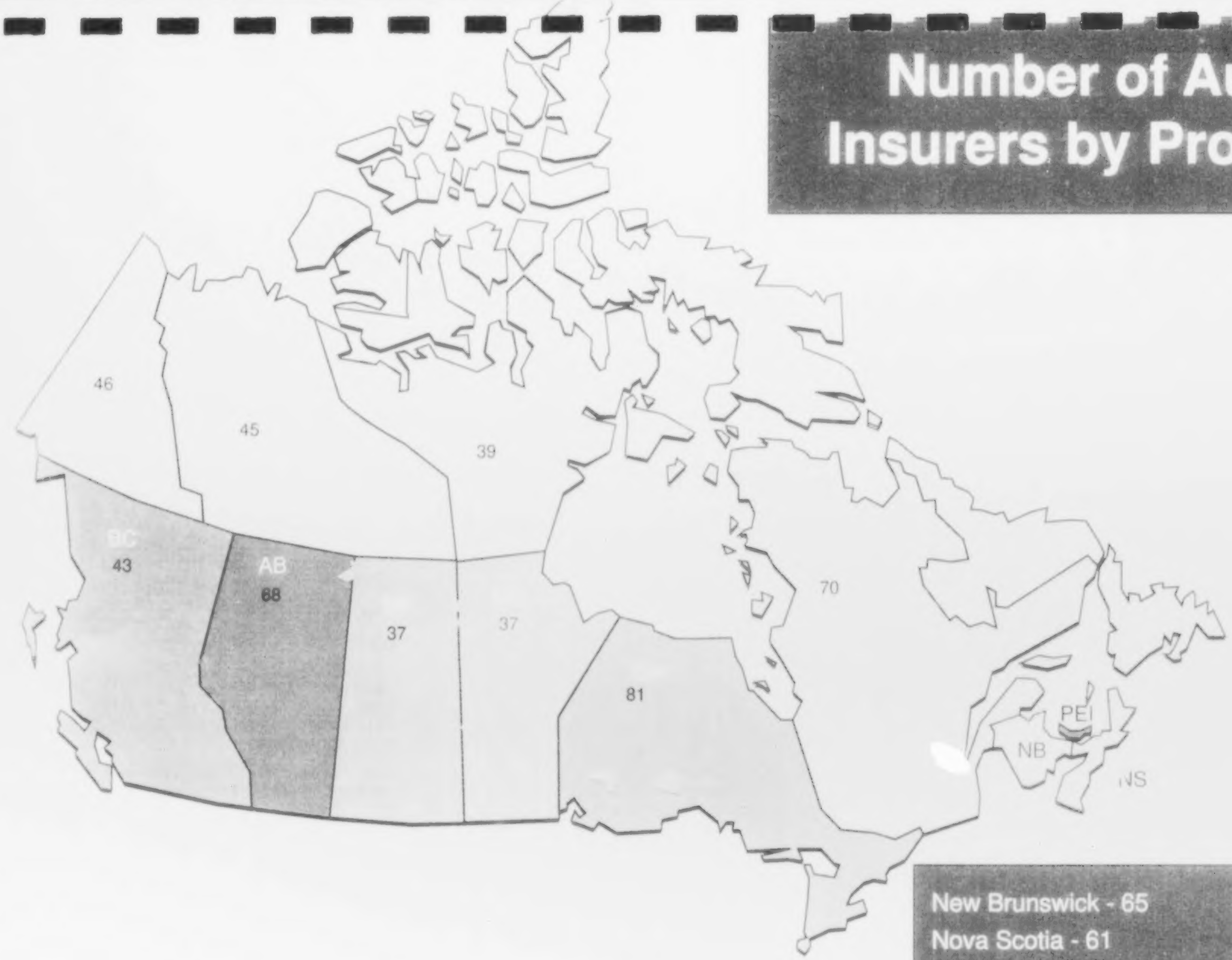
Number of Auto Insurers by Province



New Brunswick - 65
Nova Scotia - 61
Prince Edward Island - 46
Newfoundland and Labrador - 45

Graph 2

Number of Auto Insurers by Province

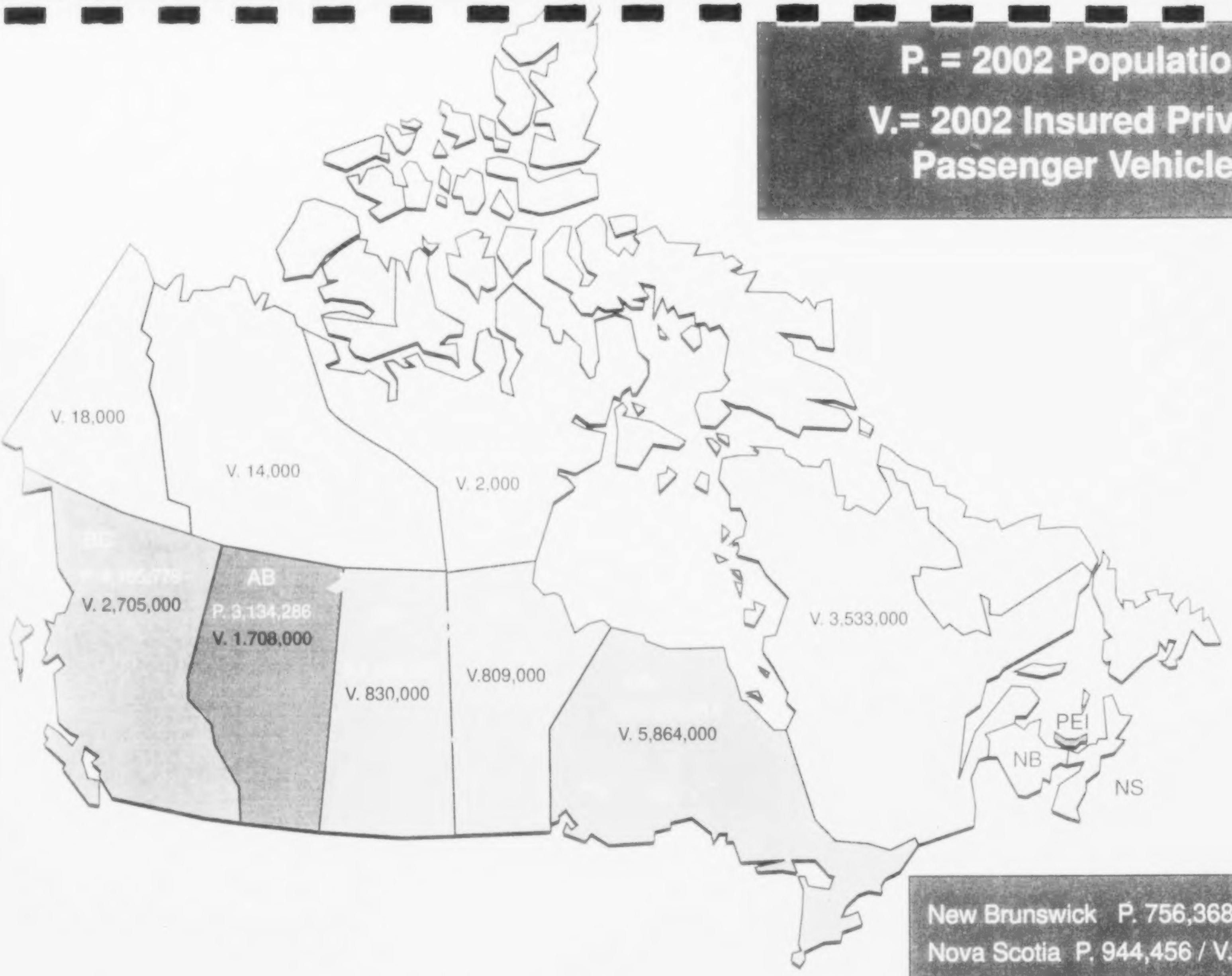


New Brunswick - 65
Nova Scotia - 61
Prince Edward Island - 46
Newfoundland and Labrador - 45

Graph 2

P. = 2002 Population

V.= 2002 Insured Private Passenger Vehicles

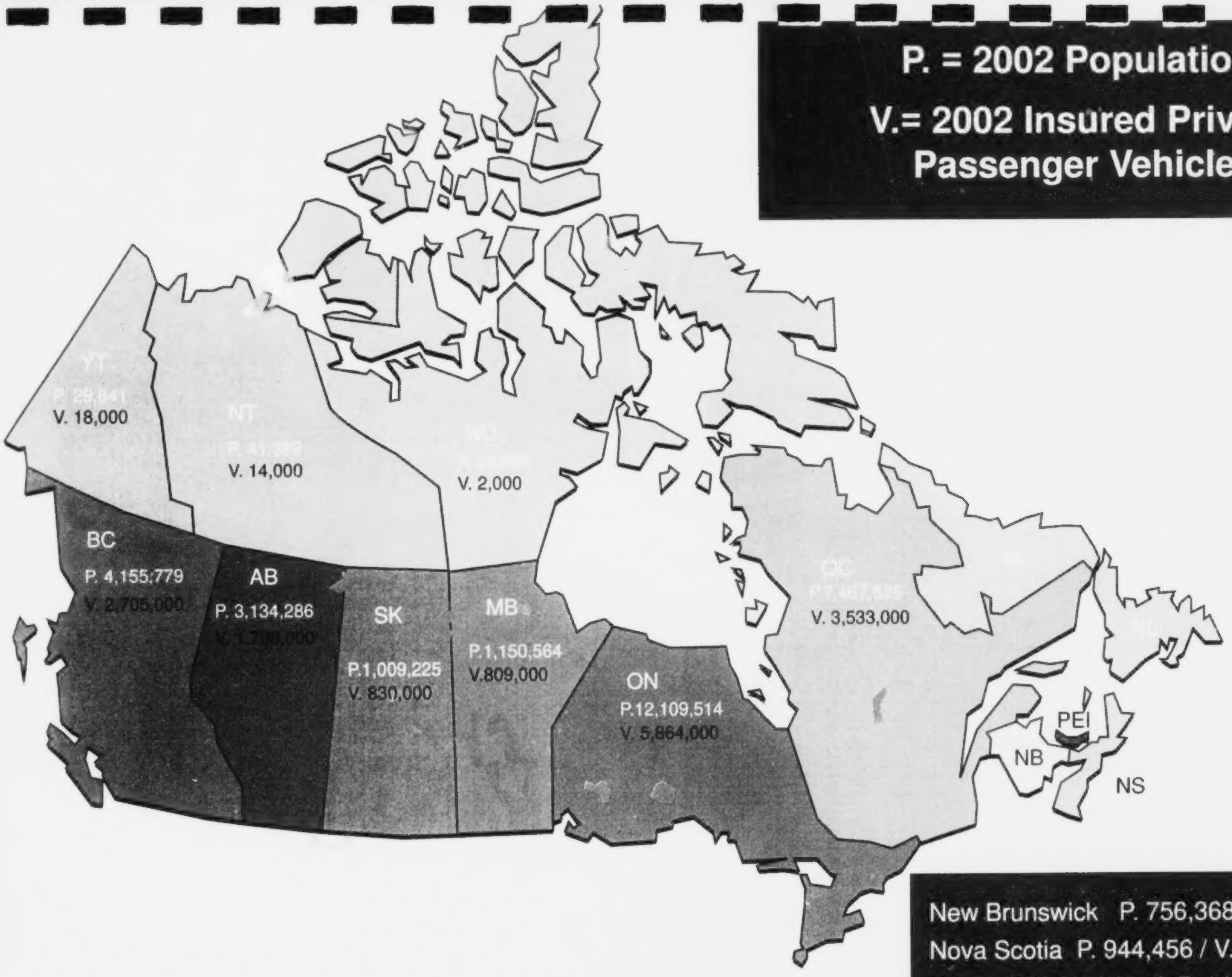


New Brunswick P. 756,368 /V. 389,000
Nova Scotia P. 944,456 / V. 462,000
Prince Edward Island P. 140,412 / V. 71,000
Newfoundland and Labrador P. 531, 145 / V. 217,000

Graph 3: Map of Canada

P. = 2002 Population

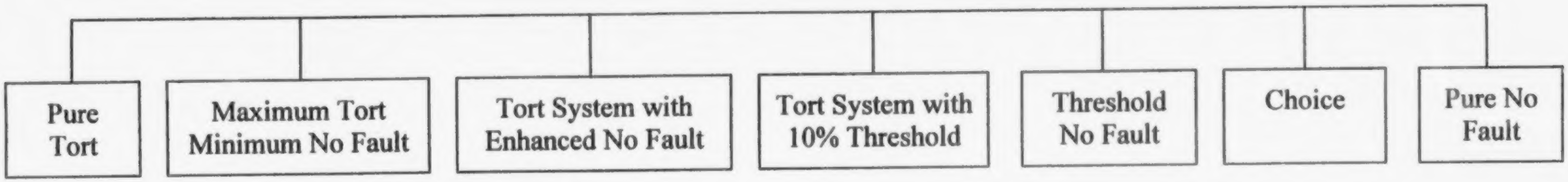
V.= 2002 Insured Private Passenger Vehicles



New Brunswick P. 756,368 /V. 389,000
Nova Scotia P. 944,456 / V. 462,000
Prince Edward Island P. 140,412 / V. 71,000
Newfoundland and Labrador P. 531, 145 / V. 217,000

Graph 3: Map of Canada

ALTERNATIVE COMPENSATION MODELS

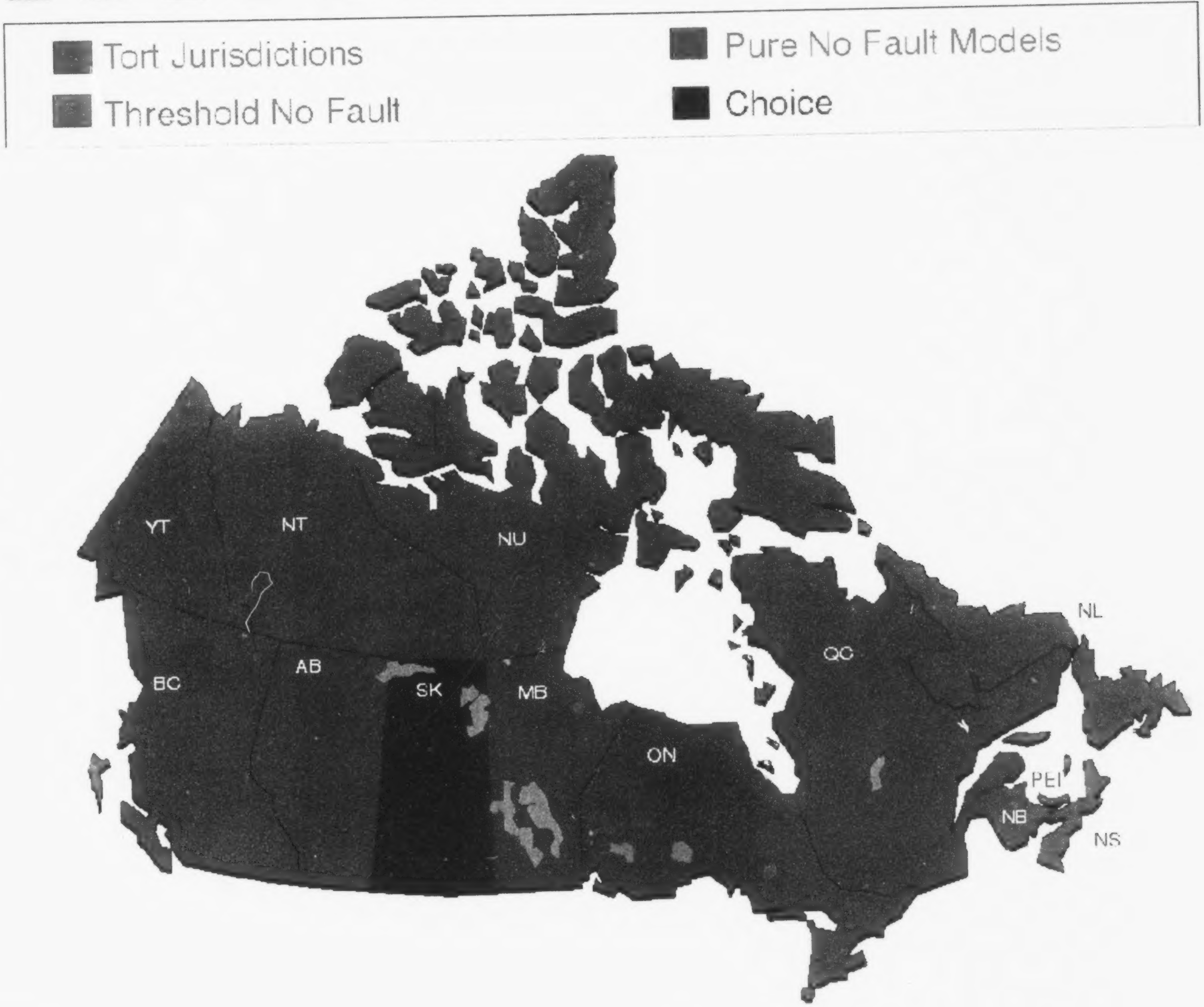

Pure Tort
Maximum Tort Minimum No Fault
Tort System with Enhanced No Fault
Tort System with 10% Threshold
Threshold No Fault
Choice
Pure No Fault

Graph 4

Table 1: Auto Insurance Systems and Results by Province (2002)

	AB	BC	MB	NB	NF	NWT & Nunavut	NS	ON	PEI	PQ	SK	YK
Administration	Private	Public w/ private competition for optional & excess coverage	Public w/ private competition for optional & excess coverage	Private	Private	Private	Private	Private	Private	Public for Bodily injury; Private for property damage	Public w/ private competition for optional & excess coverage	Private
Compulsory minimum 3rd party liability	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$200,000	$50,000	$200,000	$200,000
Medical payments	$10,000; chiropractic $500/person, time limit 2 yrs	$150,000	No time or amt. Limit, includes rehab.	$50,000/person, time limit 4 yrs.	$25,000, time limit 4 yrs.	$25,000/person, time limit 4 yrs	$25,000/person, time limit 4 yrs	$100,000/person ($1 million if injury catastrophic)	$25,000/person, time limit 4 yrs.	No time or amount limit	$5,000,000/ person	$10,000/person, time limit 2 yrs
Funeral expense benefit	$2,000	$2,500	$6,644	$2,500	$1,000	$1,000	$1,000	$6,000	$1,000	$3,951	$5732	$2,000
Maximum Disability Benefits	$300/wk, 80% of gross wages	$300/wk, 75% of gross wages	$63,000/yr, 90% of gross wages; indexed	$250/wk	$140/wk	$140/wk, 80% of gross wages	$140/wk.	80% of net wages to max. $400/wk, $185/wk if not employed	$140/wk.	90% of net wages; max income gross $52,000/yr; indexed	90% of net wages; max. income gross $57,788/yr; indexed	80% gross wages; max $300/wk.
Time Period	104 wks total disability	104 wks temp, lifetime total disability		104 wks partial, lifetime if total	104 wks partial. Life if total.	104 wks temp. disability, lifetime if totally disabled	104 wks, partial, lifetime if total disability	104 wks max, longer if unable to pursue any suitable occupation	104 wks, partial disability, to age 65 if totally disabled	temp 3 yrs.; lifetime if permanently disabled		104 wks, temp or total disability
Right to sue for pain & suffering	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes, with qualifications	Yes	No	Yes, unless on PIPP no-fault system	Yes
Right to sue for economic loss exceeding no-fault benefits	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes, with qualifications	Yes	No	Yes, but award is reduced by other insurance benefits	Yes
Lawsuits are not permitted with respect to injuries sustained in automobile accidents in Quebec. Victims are compensated by their government insurer for their injuries whether or not the accident occurs in Quebec.												

Graph 5: Table from Auto Insurance Reform for Canada's Tort Provinces, a Working Paper 2003-05 by Norma L. Nielson, Ph.D. and Anne E. Kleffner, Ph.D.


Tort Jurisdictions
Threshold No Fault
Pure No Fault Models
Choice
YT
NT
NU
BC
AB
SK
MB
ON
QC
NL
PEI
NB
NS

Graph 6

Composite Evaluation of Options

	MAXIMUM TORT	ADD-ON	THRESHOLD	CHOICE	PURE NO-FAULT
Deterrence	1	2	3	4	5
Compensation (Coverage)	5	1	2	4	3
Compensation (Internalization)	1	2	3	4	5
Operational Efficiency	5	4	2	3	1
Premium Costs	4	5	2	3	1
TOTAL	16 (3.2)	14 (2.8)	12 (2.4)	15 (3.0)	19 (3.6)

Graph 7

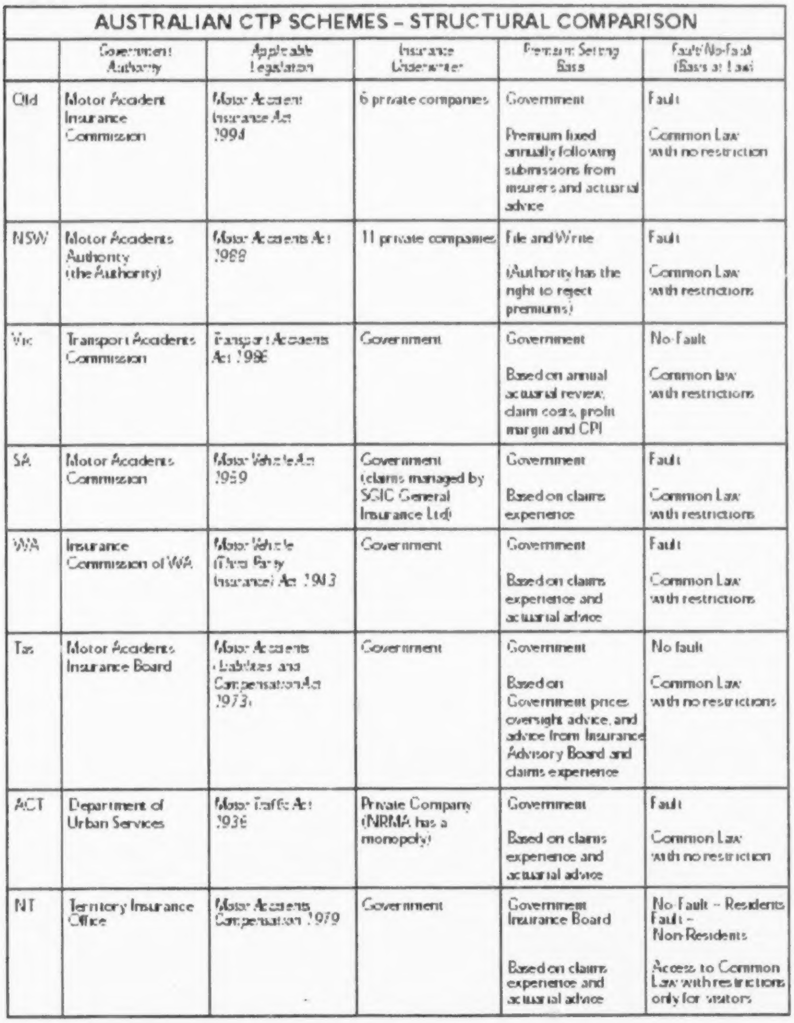


TABLE 14

AUSTRALIAN CTP SCHEMES – STRUCTURAL COMPARISON					
	Government Authority	Applicable Legislation	Insurance Underwriter	Premium Setting Basis	Fault/No-Fault (Basis at Law)
Qld	Motor Accident Insurance Commission	Motor Accident Insurance Act 1994	6 private companies	Government Premium fixed annually following submissions from insurers and actuarial advice	Fault Common Law with no restriction
NSW	Motor Accidents Authority (the Authority)	Motor Accidents Act 1988	11 private companies	File and Write (Authority has the right to reject premiums)	Fault Common Law with restrictions
Vic	Transport Accidents Commission	Transport Accidents Act 1986	Government	Government Based on annual actuarial review, claim costs, profit margin and CPI	No-Fault Common law with restrictions
SA	Motor Accidents Commission	Motor Vehicle Act 1959	Government (claims managed by SGIC General Insurance Ltd)	Government Based on claims experience	Fault Common Law with restrictions
WA	Insurance Commission of WA	Motor Vehicle (Third Party Insurance) Act 1943	Government	Government Based on claims experience and actuarial advice	Fault Common Law with restrictions
Tas	Motor Accidents Insurance Board	Motor Accidents (Liabilities and Compensation Act 1973)	Government	Government Based on Government prices oversight advice, and advice from Insurance Advisory Board and claims experience	No fault Common Law with no restrictions
ACT	Department of Urban Services	Motor Traffic Act 1936	Private Company (NRMA has a monopoly)	Government Based on claims experience and actuarial advice	Fault Common Law with no restriction
NT	Territory Insurance Office	Motor Accidents Compensation 1979	Government	Government Insurance Board Based on claims experience and actuarial advice	No-Fault – Residents Fault – Non-Residents Access to Common Law with restrictions only for visitors

Graph 8: Table 14 from Review of Queensland Compulsory Third Party Insurance Schemes Report

3a. PRODUCT– NO FAULT

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
i) No Fault Applicable	Yes	No	No	No	No	Yes	No	NT residents only	
ii) Definition of Accident	incident directly caused by the driving					"Where personal injury results directly from the driving of, or collision with a motor vehicle"		caused by or arising out of the use of	
iii) Benefits & Compensation									
❖ Medical & Rehabilitation	Reasonable costs Family Excess: $462			refer footnote[7]	refer footnote[8]	$200,000 *Unlimited if >2 hours care a day required*		Reasonable costs	
❖ Income Benefits									
Excess *days not covered*	first 5 days					first 7 days		Accident day	
Maximum	80% earnings up to $739 pw LOE $624 pw LOEC					80% earnings, up to 4.25 AW		85% of avg earnings of wage earners net of tax	
Time Limit	18 mths LOE[9] 3 years LOEC[10]					2 yrs usual work 5 yrs any work		None	
❖ Impairment									
Lump Sum Payment	$812 for each % point imp't > 10%					None		AWE ($817.60) x 208 x % Imp. >5%	
Impairment Annuity	Yes[11] varies considerably depending on each % point imp. > 10% and age								

---

[6] as reported by schemes

[7] agreement with Health Department (not a legislative requirement) to cover the cost of emergency public hospital treatment and transport

[8] agreement to cover Ambulance Costs on a No Fault basis

[9] loss of earnings, payable for up to 18 months (taxable)

[10] loss of earnings capacity (non taxable) payable up to 3 years if impairment 50% or less (to retirement age if impairment 50% or more) not payable after settlement of pecuniary loss damages

[11] payable after 18 months only if no LOEC payments are being received, not payable after settlement of pecuniary loss damages; payments cease at 3 years unless more than 50% impaired in which case payments can continue to age 75

N.B. **Shaded areas throughout this document mean that information is not available or not applicable to that respective State.**

Graph 9a: Australian CTP Scheme Comparison Table

3a. PRODUCT– NO FAULT

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
i) No Fault Applicable	Yes	No	No	No	No	Yes	No	NT residents only	
ii) Definition of Accident	incident directly caused by the driving					"Where personal injury results directly from the driving of, or collision with a motor vehicle"		caused by or arising out of the use of	
iii) Benefits & Compensation									
❖ **Medical & Rehabilitation**	Reasonable costs. Family Excess: $462			**refer footnote[7]**	**refer footnote[8]**	$200,000 *Unlimited if >2 hours care a day required*		Reasonable costs	
❖ **Income Benefits**									
Excess *days not covered*	first 5 days					first 7 days		Accident day	
Maximum	80% earnings up to $739 pw LOE $624 pw LOEC					80% earnings, up to 4.25 AW		85% of avg earnings of wage earners net of tax.	
Time Limit	18 mths LOE[9] 3 years LOEC[10]					2 yrs usual work 5 yrs any work		None	
❖ **Impairment**									
Lump Sum Payment	$812 for each % point imp't. > 10%					None		AWE ($817.60) x 208 x % Imp. >5%	
Impairment Annuity	Yes[11] varies considerably depending on each % point imp. > 10% and age								

---

[6] as reported by schemes
[7] agreement with Health Department (not a legislative requirement) to cover the cost of emergency public hospital treatment and transport
[8] agreement to cover Ambulance Costs on a No Fault basis
[9] loss of earnings, payable for up to 18 months (taxable)
[10] loss of earnings capacity (non taxable) payable up to 3 years if impairment 50% or less (to retirement age if impairment 50% or more) not payable after settlement of pecuniary loss damages
[11] payable after 18 months only if no LOEC payments are being received, not payable after settlement of pecuniary loss damages; payments cease at 3 years unless more than 50% impaired in which case payments can continue to age 75

N.B. **Shaded areas throughout this document mean that information is not available or not applicable to that respective State.**

Graph 9a: Australian CTP Scheme Comparison Table

3b. PRODUCT– COMMON LAW

	VIC	NSW	QLD	WA	SA	TAS	ACT	NT	NZ
i) States Applicable	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
ii) Definition of Accident	Indemnity - arising out of the use	- caused by fault in use or operation - injury to arise from driving, collision or out of control	driving, out of control, collision or defect causing loss of control	directly caused by or by the driving of a motor vehicle	Driving, vehicle running out of control, or person travelling on road colliding with vehicle when stationary, or action taken to avoid collision	"Where personal injury results directly from the driving of, or collision with a motor vehicle"	caused by or arising out of the use of the motor vehicle in any part of the Commonwealth	caused by or arising out of the use of ..	
iii) Benefits & Compensation ❖ Access	Serious Injury	Pain & Suffering - > 10% permanent impairment	No restrictions (except for legal costs on smaller claims)	Threshold for Pain and Suffering	Threshold for eco loss (see below). All reasonable treatment expenses paid. 1st week of eco loss not paid	No restrictions	No restrictions	Non-NT residents only	
❖ Pecuniary Loss									
Threshold **Maximum**	$35,030 $810,820	None 2,712 net per week	None 3 times AWE	None Unlimited	See above $2.2M *(subject to CPI)*	None 4.25 AW	None Unlimited	None Unlimited	
❖ Pain & Suffering									
Threshold **Maximum**	$36,030 $360,360	None $296,000	None Unlimited	$12,000[12] $240,000	See footnote[13] $102,600	None Unlimited	None Unlimited	None $170,060.80	
❖ Excess	Nil	$500 excess on insured if ≥ 25% at fault	Nil	No	$300 excess on insured if >25% at fault	No	No	No	
iv) Discount rate	6%	5%	5%	6%	5%	7%	3%	0%	
v) Limitation of Actions	6 years	3 years, unless leave of court given[14]	3 years (For adults)	6 years (For adults)	3 years (For adults)	3 years 6 years on applic. to court	6 years	3 years	

---

[12] deductible on awards up to $36,500; phased out from $36,500 to $48,500; no deduction after $48,500

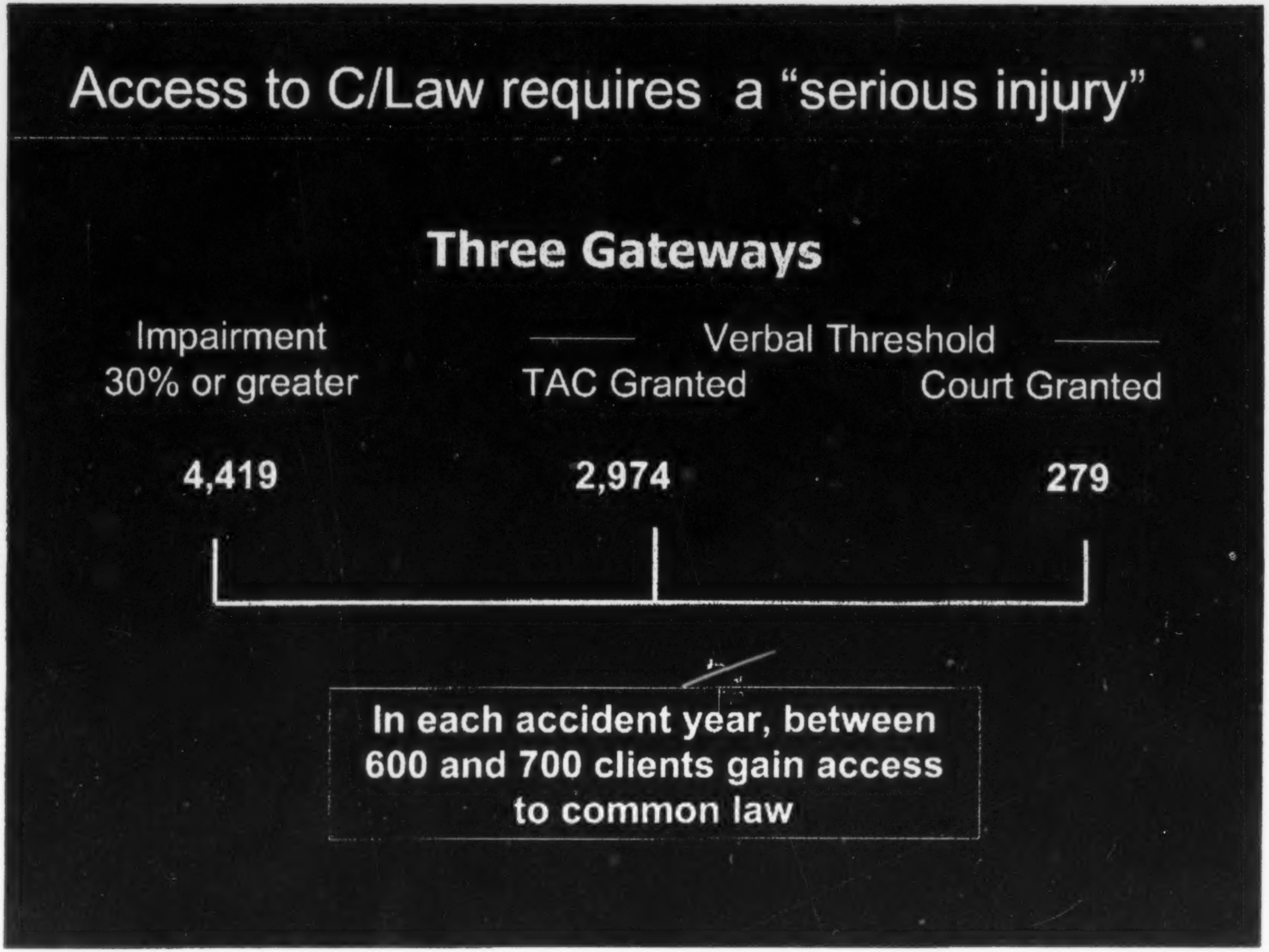
[13] significant impairment for >= 7days or >=$2,750 medical expenses, subject to cpi (Note: effective 1 January 2003, under a revised scheme, the max. for P&S will be $241,500, subject to CPI)

[14] leave must not be granted unless full and satisfactory explanation is given and the total damages are likely to be over 25% of maximum for non-economic loss. If a matter is going through assessment at Claim Assessment & Resolution Services (CARS), limitation period does not run until 2 months after a certificate of assessment or exemption is issued

Graph 9b: Australian CTP Scheme Comparison Table

Division	Type of Injury	**Approx** New No-Fault Claims per Annum	**Approx** No. of Active Claims	Indicative Portfolio Sizes
Major Injury			3,800	
	ABI	120		30
	Spinal	20		30
	other major injuries	?		30
	dependency benefits	420		400
	Medical	?		?
Recovery Support			20,000	
	soft tissue	950		150-600
	Orthopaedic	800		depending
	long hospital	800		on the team
Low Risk		13,400	17,000	2,000

Graph 10: provides a comparison of TAC with other Compulsory Third Party Liability in Australia.



Access to C/Law requires a "serious injury"

Three Gateways

Impairment 30% or greater — **4,419**

Verbal Threshold:

TAC Granted — **2,974**

Court Granted — **279**

In each accident year, between 600 and 700 clients gain access to common law

Graph 11

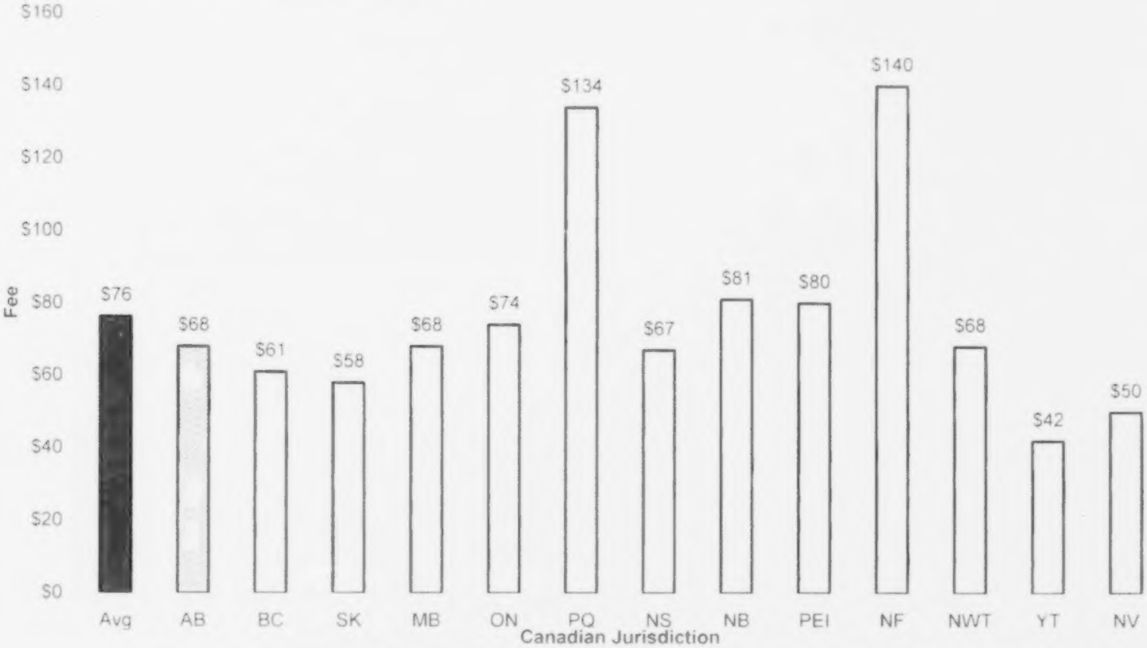
Province	Population	# of Insured Vehicles	# Insurers	# of Insurance Brokers
Nova Scotia	944,456	462,000	61	1287
New Brunswick	756,368	389,000	65	815
Nfld and Labrador	531,145	217,000	45	618
Prince Edward Island	140,412	71,000	46	103

Proportion of Canadian Auto and Total Direct Earned Premiums Represented by Atlantic Canada (2002)

Line	Atlantic Canada - Direct Earned Premiums ($ millions)	Total Canada - Direct Earned Premiums ($ millions)	Proportion Represented by Atlantic Canada
Auto	958	11,003	8.7%

Graph 12: Current relevant insurance statistics re: Atlantic Canada

Vehicle Registration Comparison*

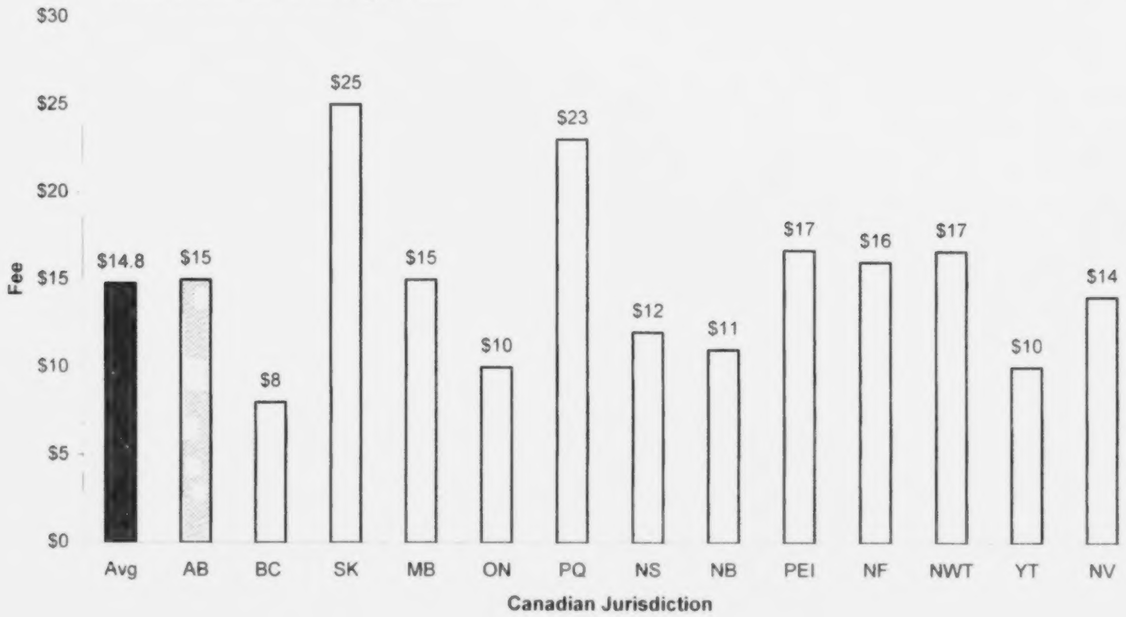


*Survey was standardized for comparative purposes to represent the annual fee charged to renew a Ford Taurus sedan weighing 3,294 pounds in an urban area (includes service/administrative fees).

***Graph 13**:*

2002/03 Government of Alberta Annual Report-Draft

Driver's License Comparison*



*Survey was standardized for comparative purposes to represent the annual fee for a driver's license with no demerits (includes service/administrative fees).

Graph 14:

EARNED 2002

	Earned Premium divided by	Number of Insured Vehicles	Average Earned Premium
Province:			
Ontario	6,024,467,000	5,863,803	$1,027.40
Manitoba	641,471,000*	810,611*	721.36*
British Columbia	1,608,642,000* (includes commercial and other classes)	2,705,000*	522.00* (includes $38.00 government costs)
New Brunswick	365,108,709	388,873	938.89
Newfoundland	185,757,892	216,689	857.26
Nova Scotia	368,968,602	461,752	799.06
Prince Edward Island	51,839,617	70,897	731.20
Alberta	1,610,922,402	1,708,346	942.97
Saskatchewan	468,000,000*	830,000*	566*
Quebec	1,965,217,971	3,579,141	549.07

* ***author of this report unable to independently validate figure cited.***

Graph 15:

2002

	Total Claims divided by	**Number of Insured Vehicles**	**Average Loss Costs**
Province:			
Ontario	5,442,818,151	5,863,803	$928.20
Manitoba	449,522,585	629,557	714.03
British Columbia	2,193,492*	2,705,000*	395.00*
New Brunswick	327,334,321	388,873	841.76
Newfoundland	142,422,885	216,689	657.27
Nova Scotia	317,833,077	461,752	688.32
Prince Edward Island	40,530,329	70,897	571.68
Alberta	1,300,072,077	1,708,346	761.01
Quebec	687,500,000*	3,652,945*	*
Saskatchewan	*	830,000*	2846*

* author of this report unable to independently validate figure cited.

Graph 16:

	Number of Insurance Brokers before Conversion to Public Model	**Since**	
Province:			
Manitoba:	Unknown	318	
British Columbia:	600	900	
Quebec:	5221	Unknown	
Saskatchewan:	Unknown	400	

COMMISSION

	Commission before Conversion	**Since**
Manitoba:	Unknown	5% on Basic 12.5% on Optional
British Columbia	12.5 – 15%	@3%
Saskatchewan	Unknown	15,376,000
Quebec	62 million out of 450 million	Unknown

Graph 17:

NUMBER OF EMPLOYEES IN PUBLIC INSURANCE CORPORATIONS IN CANADA – 2003

ICBC	4800
SGI	1500
MPI	1559
SAAQ	3099

PAYROLL 2003

ICBC	$358,429
SGI	$.15,376,000 (Autofund only)
MPI	$75,274,000
SAAQ	160,826,000(plus road safety staff)

Graph 18:

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE

EFFECT ON PROVINCIAL FINANCES

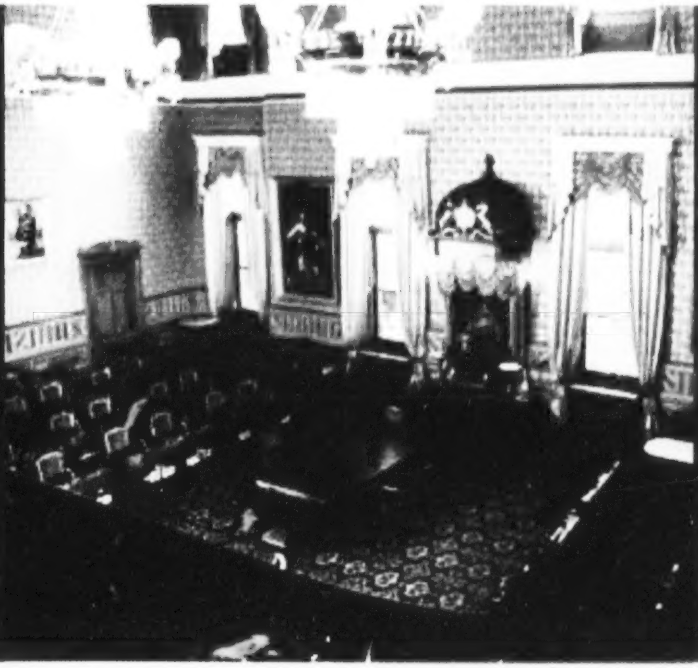


Photo - New Brunswick Legislature

SEPTEMBER 30, 2003

TAB 3

Atlantic Canada Insurance Harmonization
Task Force

Study of cost-benefit and
legal implications of an Atlantic public
automobile insurance system

EFFECTS ON PROVINCIAL FINANCES

August 28, 2003
Updated September 23, 2003

Contents

1. Executive Summary 2
2. Introduction 4
3. Premium Taxes . 6
4. Health Services Levy 9
5. HST/PST on premiums 10
6. Cost Recovery impacts 13
7. Corporate taxes 14
8. Other considerations . 16
9. Impact on Provincial Financial Situations 18
10. Conclusions 20

Executive Summary

The Council of Atlantic Premiers have directed the Atlantic Canada Insurance Harmonization Task Force to "conduct and complete a comprehensive study of the full cost-benefit and legal implications of establishing an Atlantic public automobile insurance system". This Report deals with the portion of the study related to the effects on provincial finances.

The potential loss of revenue to the Atlantic Provinces that could result from the establishment of an Atlantic public automobile insurance system totals $198,282,100 annually, based on the level of premiums and the tax regimes that exist today. The potential lost revenue accounts for 1.26% of the total Atlantic Provinces revenues. The impact ranges from 0.58% in Prince Edward Island to a high of 1.55% in Newfoundland and Labrador.

The lost revenue would place those Atlantic Provinces with budgeted annual surpluses in a deficit position and substantially increases the deficit of those who are currently budgeting a deficit.

The impact of lost revenue on each province would be:

Province	**Potential Revenue Loss**
Nova Scotia	$ 61,350,000
New Brunswick	70,715,900
Newfoundland and Labrador	60,546,200
Prince Edward Island	5,670,000
Total	$198,282,100

The revenue would potentially be lost from the following sources:

Revenue Source	**Annual Potential Lost Revenue**
➢ Insurance premium taxes	$ 45,788,400
➢ Health Services levy	50,043,700
➢ Provincial sales tax and provincial non-refundable portion of HST on taxable	98,800,000
expenditures	1,550,000
➢ Cost Recovery	1,640,000
➢ Corporate income taxes	100,000
➢ Capital tax	360,000
➢ Payroll tax	
Total	$198,282,100

For purposes of this report, all provincial taxes and fees have been considered to be potentially at risk of loss. The approach taken in estimating the potential lost revenue to the Atlantic Provinces assumes that the entity that might administer an Atlantic public automobile insurance system would be free of all provincial taxes.

No estimate has been made of the potential lost revenues from the impact of a public system on insurance agencies, brokers, adjusters, or appraisers.

Introduction

The Council of Atlantic Premiers met in Charlottetown on June 18, 2003 and agreed to establish an Auto Insurance Task Force. One of the projects the Task Force was directed to undertake was - "conduct and complete a comprehensive study of the full cost-benefit and legal implications of establishing an Atlantic public automobile insurance system. The Task Force is to report to the Council of Atlantic Premiers by September 30, 2003."

Terms of reference for the study were developed. This Report deals with Section 5 (a) of those terms of Reference, specifically :

a) *To identify the effects of the establishment of a public automobile system on the respective provincial finances, namely the potential loss of revenue from:*

   i. *the loss of revenue from the HST/PST on premiums (where applicable);*
   ii. *the loss of revenue from the Health Services Levy;*
   iii. *the loss of revenues from Premium taxes;*
   iv. *the loss of cost recovery for the PUB (where applicable);*
   v. *the loss of cost recovery for the Superintendent (where applicable);*
   vi. *the loss of revenue from other sources (i.e., licensing fees for adjusters, brokers, etc.);*
   vii. *the loss of revenue from corporate income tax and other corporate taxes*

The data for this report came from provincial governments directly, from their published reports, from publications of the Insurance Bureau of Canada, and from additional information provided by the Insurance Bureau of Canada. The estimation of the potential revenue loss required projections and calculations, based on available data, where specific information could not be obtained from the provinces.

Identification of the potential loss of revenue from some sources can be relatively accurate - Premium taxes and Health Services Levy. In other cases, determining the potential loss of revenue requires assumptions. Few, if any insurance companies deal with automobile insurance only. Therefore, information about their taxes and other fees paid to governments are co-mingled with their other activities and not easily separated. In addition, tax information about companies is protected by privacy legislation and other agreements.

The time period of the data available and material provided by provinces varied. Where ever possible the base year used is 2002. Assumptions have been used to bring the data to the common year. In cases where projections can not be made reasonably, information from the available year has been used.

In general, the approach taken in estimating the potential lost revenue to the Atlantic Provinces has been to assume that the entity that might administer an Atlantic public automobile insurance system would be free of all provincial taxes. For purposes of this report, all provincial taxes and fees have been considered to be potentially at risk of loss.

No estimates have been made of the economic impact or potential lost individual or corporate income tax from the changes in employment levels in the insurance company sector or agencies, brokers, adjusters or appraisers.

Premium Taxes

All Atlantic Provinces levy a tax on insurance premiums earned in their jurisdiction. The rates applicable for automobile insurance premiums in each of the Atlantic Provinces is shown below:

Province	Tax rate on auto insurance premiums
Nova Scotia	4.0%
New Brunswick	3.0%
Newfoundland and Labrador	4.0%
Prince Edward Island	3.5%

Automobile insurance premiums reported to governments by insurance companies are not available for the same year from all provinces. Where possible, information is presented for the year 2002. In some cases, projections have been made or the information is presented for the year in which the information was available.

Province	Automobile Insurance Premiums (000's)
Nova Scotia	$ 476,305 = projected
New Brunswick	491,200
Newfoundland and Labrador	250,000
Prince Edward Island	57,143
Total	$1,274,648

The amount of insurance premium tax attributable to automobile insurance premiums for each province is as follows:

Province	**Automobile Insurance Premium Taxes (000's)**
Nova Scotia	$ 19,052.2
New Brunswick	14,736.2
Newfoundland and Labrador	10,000.0
Prince Edward Island	2,000.0
Total	$ 45,788.4

The Insurance Bureau of Canada has a number of publications that indicate the amount of taxes they pay. These publications were reviewed to ensure the reliability of the numbers presented.

Their reports tend to have slightly higher amounts of taxes and fees paid to governments because the reports indicate they cover the entire Property and Casualty sector which is somewhat broader than automobile insurance alone. For example, in Nova Scotia, 60% of Property and Casualty premiums relate to automobile coverage.

In a few publications of the Insurance Bureau of Canada, the amounts reported include some taxes and an estimate of losses flowing from economic impacts. This report does not quantitatively consider economic impacts.

Despite these differences, the Insurance Bureau has provided additional information that has been helpful in developing this report. In general, the amounts they have provided are comparable to the information provided by governments.

Health Services Levy

All Atlantic Provinces collect a Health Services Levy. Rates vary from province to province. The Levy is a method for Provinces to recover from insurers the costs of providing public health care to those injured in automobile accidents. Rather than the provinces recovering costs on a claim by claim basis, a calculation of the cost is converted to a charge per vehicle.

If these Levies were discontinued under a public automobile insurance system the revenue loss would be:

Province	Health Services Levy (000's)
Nova Scotia	$ 14,277.8
New Brunswick	27,579.7
Newfoundland and Labrador	6,386.2
Prince Edward Island	1,800.0
Total	$ 50,043.7

Harmonized and Provincial Sales Taxes on Premiums

Nova Scotia, New Brunswick, and Newfoundland and Labrador have harmonized their provincial retail sales taxes with the federal Goods and Services Tax. Under this harmonization agreement, retail sales taxes are applied to commodities and services in the same manner as the GST.

For GST purposes, automobile insurance premiums are considered financial transactions and the Harmonized Sales Tax is not applicable to these premiums. In Nova Scotia and New Brunswick, there is no provincial sales tax revenue attributable to automobile insurance premiums.

In Newfoundland and Labrador there is a 15% retail sales tax on insurance premiums. There is no provincial retail sales tax applied to insurance premiums in Prince Edward Island.

The potential revenue loss to provincial governments in Atlantic Canada from direct provincial retail sales tax would occur in Newfoundland and Labrador only and is estimated to be $36 million.

Province	**Retail Sales Tax Revenue (000's)**
Newfoundland and Labrador	$ 36,000

HST Input Tax Credits

For non-financial transactions, companies are required to charge HST on their sales and pay HST on their taxable expenditures. The companies receive a refund of the HST paid on expenditures by applying to the Canada Customs and Revenue Agency for an input tax credit. Insurance premiums are considered financial transactions and are treated differently. HST is not charged on insurance premiums; but, the HST paid by insurance companies is not eligible for recovery through an input tax credit.

In the three Provinces which operate under a harmonized system, insurance companies do not receive input tax credits for the HST they pay on their taxable expenditures. Under a public automobile insurance system is it likely that the current GST rules would still apply, meaning the public body administering the system would be required to pay the HST on their taxable expenditures and would not be eligible to receive a refund of those taxes.

There would be a cost to the Atlantic Provinces governments if the provincial portion of the Harmonized Sales Tax was to be rebated in a form outside of the HST agreement.

Governments do not have data on taxable expenditures by insurance companies; however, the Insurance Bureau of Canada has published information about the provincial portion of the HST for which they are not entitled to receive input tax credits. IBC has also provided amounts directly related to automobile insurance activities only for 2001. The IBC estimates have used, except for Newfoundland who provided an estimate for the entire Property and Casualty sector.

If the provincial portion of the HST paid on taxable expenditures were to be rebated to the entity administering an Atlantic public automobile insurance system, the estimated amounts would be:

Province	**Provincial portion of HST on Taxable Expenditures**
Nova Scotia	$ 26,700,000
New Brunswick	27,500,000
Newfoundland and Labrador	7,000,000
Prince Edward Island	1,600,000
Total	$ 62,800,000

Prince Edward Island does not operate under the harmonized system so there would be no impact from this category. However, the provincial sales tax is applicable to the taxable expenditures of insurance companies and the IBC estimated that those costs were $1.6 million in 2001.

Cost Recovery Impacts

The insurance sector reimburses government for certain regulatory costs. These cost recovery measures vary depending the level of activity in any particular year. In addition reimbursement for regulatory costs, there are certain licensing fees charged to those involved in various aspects of the insurance process. Due to the variable nature of these charges, an estimate of potential lost revenue is difficult and imprecise.

The amounts involved in these categories are quite minor compared to the other potential lost revenues in this report.

To ascribe a value to this category, the amounts used are those reported by the provinces, where available. Prince Edward Island, Newfoundland and New Brunswick have reported estimated amounts. Estimates for Nova Scotia have been made from amounts reported in the budget.

Province	**Cost recovery and licensing**
Nova Scotia	$ 500,000
New Brunswick	200,000
Newfoundland and Labrador	700,000
Prince Edward Island	150,000
Total	$1,550,000

Corporate Taxes

The corporate taxes affected by an Atlantic public automobile insurance system would be Corporate Income Taxes, Payroll taxes and Capital Taxes.

It is assumed that a public automobile insurance system would either be not-for-profit of if profitable, would be exempt from corporate income taxes, Nova Scotia capital tax, and payroll tax in Newfoundland and Labrador.

An estimate of these corporate taxes will be imprecise because of the difficulty in obtaining data due to privacy protection measures and because of the co-mingling of automobile insurance activities with other business lines that insurance companies are engaged in. These estimates should be used with caution.

Using information provided by the Insurance Bureau of Canada for 2001, an approximation of the amount of corporate income tax that could be lost is:

Province	**Potential Lost Corporate Income Tax**
Nova Scotia	$ 720,000
New Brunswick	700,000
Newfoundland and Labrador	100,000
Prince Edward Island	120,000
Total	$1,640,000

Capital tax

Nova Scotia levies a Capital Tax that impacts insurance companies engaged in Property and Casualty insurance. The Insurance Bureau of Canada estimates that for the entire Property and Casualty sector, $900,000 in Capital Tax was paid. The Insurance Bureau of Canada has also provided, an estimate of the Capital Taxes paid in 2001 that could be lost are:

Province	**Capital Tax**
Nova Scotia	$ 100,000

Payroll Tax

Newfoundland and Labrador impose a payroll tax on companies whose payrolls exceed certain thresholds. In the case of automobile insurance companies payroll, the estimated amount is:

Province	**Payroll Tax**
Newfoundland	$360,000

Other Considerations

There are impacts on provincial finances that can not be quantified; but, are described narratively for information purposes.

Insurance company employment

Property and Casualty insurance companies employ approximately 2,000 people in the Atlantic Provinces. Under a public automobile insurance system, there would be an impact on the number and type of employees. Depending on the size and extent of any changes in employment, there would be an impact on individual income taxes.

Related employment (Brokers, adjusters, and appraisers)

The Property and Casualty Insurance sector provides indirect employment for an estimated 4,800 people in Atlantic Canada. Under a public automobile insurance system, there would be an impact on the number and type of indirect jobs. Depending on the size and extent of any changes in this type of employment, there would be an impact on individual income taxes.

Broker Commissions

The Insurance Bureau of Canada reports that commissions are paid to brokers at the rate of approximately 12.4% of the premium amount. Under other Canadian public automobile insurance systems, IBC reports that the commissions have tended to be in the range of 4.7%.

Assuming a conservative differential of 6% for lower commissions on $1.3 billion of insurance premiums, there would a loss of revenues to the broker community in the order of $78 million. There would be an associated loss of corporate and individual income taxes from this reduced revenue.

Municipal taxes

Insurance companies and agencies pay municipal property taxes. Some of those property taxes would be continued under the various grants-in-lieu programs that governments operate. However, there could be lost municipal revenue from Business Occupancy type taxes that governments do not typically pay.

Capital invested by Insurance companies

Insurance companies invest their capital in businesses in communities throughout the Atlantic provinces as well as in Provincial issued securities. The Insurance Bureau of Canada estimates that their companies have $2.8 billion invested in the Atlantic region. If insurance companies were not providing automobile insurance, then investments in the Atlantic provinces could be changed. The nature and extent of any change can not be estimated, nor can any resulting economic impact.

Impact on Provincial Financial Situations

To understand and appreciate the impact of potential lost revenue under an Atlantic public automobile insurance system, those revenues should be related to the total revenues and operating results of the respective Atlantic Provinces.

Province	Total Revenues 2001-02 (millions)	Lost Revenue as % of Total Revenue
Nova Scotia	$ 5,638	1.09%
New Brunswick	5,217	1.36%
Newfoundland and Labrador	3,900	1.55%
Prince Edward Island	982	0.58%
Totals	$15,737	1.26%

The relationship of the potential lost revenue to revenues could also be examined by considering provincial source revenues only. The percentage impact would be considerably higher. The argument for this type of comparison is that provincial source revenues are those that provinces can directly control.

Another comparison of relevance is the impact on the results of provincial operations on an annual basis. Assuming the estimates in this report would be applicable to the 2003-04 fiscal year, the budgeted results have been revised to illustrate the impact the potential loss of revenue would have on the provinces annual results.

Province	**Impact on Budget**	**2003-04** (000's) **Adjusted**
Nova Scotia	$ 2,843 Surplus	$ (58,507) Deficit
New Brunswick	7,500 Surplus	(63,216) Deficit
Newfoundland	(212,700) Deficit (cash)	(273,146) Deficit (cash)
Prince Edward Island	(11,492) Deficit	(17,162) Deficit

Equalization

The impact of the potential lost revenue on equalization payments was discussed with a provincial official. The official confirmed that given the design of the equalization program and the formula, little if any of the revenue lost would be recouped through increased equalization payments.

Capital Markets

A feature of any insurance program is a portfolio of assets to support potential claims to help ensure that claims will be paid. Generally, the capital required is in the order of one half of annual premiums. The amount that would be judged necessary to support a public automobile insurance system is not known. Borrowing would be necessary, either by the provinces or the new insurance entity. The impact that any borrowing would have on the Atlantic Provinces in capital markets can not be assessed.

Conclusions

This report identifies the potential loss of revenue and the effect on provincial finances associated with the possible establishment of an Atlantic public automobile insurance system. The estimation of the potential revenue loss assumes, for the sake of this report, that the entity that might administer a public automobile insurance system would be free of all provincial taxes and fees.

The data for this report came from provincial governments directly, from their published reports, from publications of the Insurance Bureau of Canada, and from additional information provided by the Insurance Bureau of Canada. The estimation of the potential revenue loss required projections and calculations, based on available data, where specific information could not be obtained from the provinces.

Every attempt has been made to include the most current information possible. This is not always possible; but, the order of magnitude is not significantly affected.

Other considerations, that could impact in provincial revenues have not been quantified. Those considerations include employment impacts, economic impacts, effect on provincial borrowing ability, impacts on municipal revenues, and any changes to broker commissions.

The attached chart shows the potential for the loss of revenue if the current system of insurance were to have all taxes removed. The sources of revenue and amounts for each province are shown.

Potential Revenue Loss from all Sources

Revenue Source	Nova Scotia	New Brunswick	Newfoundland and Labrador	Prince Edward Island	Total
Premium Tax	19,052,200	14,736,200	10,000,000	2,000,000	45,788,400
Health Services Levy	14,277,800	27,579,700	6,386,200	1,800,000	50,043,700
Provincial Sales Tax	—	—	36,000,000	—	36,000,000
Provincial non-refundable portion of HST	26,700,000	27,500,000	7,000,000	1,600,000	62,800,000
Cost Recovery	500,000	200,000	700,000	150,000	1,550,000
Corporate Income Tax	720,000	700,000	100,000	120,000	1,640,000
Capital Tax	100,000	—	—	—	100,000
Payroll Tax	—	—	360,000	—	360,000
Total	61,350,000	70,715,900	60,546,200	5,670,000	198,282,100

THE IMPACT OF INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS

TAB 4

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Canada
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McCarthy Tétrault

Memorandum

September 9, 2003

To: Ed Cramm
Secretary
The Council of Atlantic Premiers

From: Riyaz Dattu
John W. Boscariol
Orlando E. Silva

Re: **Atlantic Canada Insurance Harmonization Task Force**

As part of your comprehensive study of the full cost-benefit and legal implications of establishing an Atlantic Canada public automobile insurance system (the "System"), you have asked us to consider the effects or implications under Canada's international trade and investment agreements. In this regard, we have reviewed the following agreements: the World Trade Organization's *General Agreement on Trade in Services* ("GATS"), the *North American Free Trade Agreement* ("NAFTA"), Canada's *Agreement on Internal Trade* ("AIT"), and foreign investment protection and promotion agreements ("FIPAs") that Canada has concluded with over 20 other countries.

Summary of Conclusions

Implementation of the System appears to be inconsistent with GATS market access commitments undertaken by Canada in the insurance services sector, however, it may qualify for a general GATS exception for "services supplied in the exercise of governmental authority", provided that certain conditions have been satisfied. Under NAFTA, and Canada's FIPAs, to the extent that the replacement of private automobile insurance with a mandatory public insurance system were to deprive private insurance providers of the use or expected economic benefit of their investments, it could be argued that this constitutes an expropriation or a measure tantamount to expropriation requiring, *inter alia*, compensation to be paid to affected U.S. and Mexican investors, and investors based in FIPA countries.

Unlike NAFTA and GATS, the AIT generally does not apply to measures adopted or maintained in relation to financial institutions and financial services, including insurance.

1. The WTO General Agreement on Trade in Services

We have considered the consistency of a public automotive insurance system in the Atlantic Provinces with Canada's obligations under the *General Agreement on Trade in Services* negotiated under the auspices of the World Trade Organization ("WTO"). GATS applies to measures by WTO Members, including Canada, affecting trade in services.[1] GATS obligations apply to financial services, including insurance and insurance-related services.[2]

Scope of GATS Obligations

Under GATS Article I:2, trade in services is defined as the supply of a service through four modes: cross-border (from the territory of one Member into the territory of any other Member), consumption abroad (in the territory of one Member to the service consumer of any other Member), commercial presence (by a service supplier of one Member, through a commercial presence[3] in the territory of any other Member), and the presence of natural persons (by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member).

---

[1] "Measures by Members affecting trade in services" is defined in GATS Article XXVIII to include measures in respect of (i) the purchase, payment or use of a service; (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally; and (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another member".

[2] Financial services are addressed in GATS, its *Annex on Financial Services* (the "*Annex*"), its *Second Annex on Financial Services*, and the *Understanding on Commitments in Financial Services*. Paragraph 5 of the *Annex* provides that:

> (a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services including the following activities:
>
> *Insurance and insurance-related services*
>
> (i) Direct insurance (including co-insurance):
> (A) life
> (B) non-life
> (ii) Reinsurance and retrocession;
> (iii) Insurance intermediation, such as brokerage and agency;
> (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

[3] GATS Article XXVIII defines "commercial presence" as "any type of business or professional establishment, including through (i) the constitution, acquisition or maintenance of a juridical person, or (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service". A "juridical person" is defined as "any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association".

Measures subject to GATS include measures that are taken by central, regional or local governments and authorities as well as those taken by non-governmental bodies in the exercise of power delegated by such authorities. Under GATS Article I:3, in fulfilling its GATS commitments, Canada must take reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, including the governments of the Atlantic Provinces.

"Services Supplied in the Exercise of Governmental Authority"

Certain services are excluded from the coverage of GATS. Article I:3 of GATS excludes from the services definition "services supplied in the exercise of governmental authority". This phrase is further defined in Article I:3(c) as any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

The GATS *Annex on Financial Services*, however, provides that Article I:3(c) does not apply to financial services. Instead, paragraph 1(b) of the *Annex* provides that "services supplied in the exercise of governmental authority" means the following for purposes of the financial services obligations:

> (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
>
> (ii) activities forming part of a statutory system of social security or public retirement plans; and
>
> (iii) other activities conducted by a public entity[4] for the account or with the guarantee or using the financial resources of the Government.

Paragraph 1(c) of the *Annex* provides that if a WTO Member allows such activities as described in paragraph 1(b)(ii) and (iii) above to be conducted by its financial service suppliers[5] in competition with a public entity or a financial service supplier, the definition of services is considered to include such activities. Notably, the definition of "public entity" excludes entities that are "principally engaged in supplying financial services on commercial terms".

---

[4] Section 5 of the *Annex* defines a "public entity" as:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms, or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

[5] Paragraph 5(b) of the *Annex on Financial Services* provides that "a financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity".

Accordingly, automobile insurance services provided through a public monopoly will not be subject to GATS, if (i) the provider is considered to be a "public entity", i.e. it is owned or controlled by government, it is principally engaged in carrying out governmental functions or activities for governmental purposes, and it is not principally engaged in supplying financial services on commercial terms, (ii) its activities are conducted for the account or with the guarantee or using the financial resources of the government, and (iii) the WTO Member does not allow its financial service suppliers to conduct such activities in competition with the public entity.[6]

If the exception for "services supplied in the exercise of government authority" does not apply in this case, the establishment of a public monopoly for basic insurance services raises concerns under at least two GATS provisions – Article XVI (Market Access) and Article VIII (Monopolies and Exclusive Service Suppliers).[7]

GATS Article XVI – Market Access

Canada's specific GATS market access commitments are addressed under Article XVI and set out in its Schedule of Specific Commitments.[8] Canada's financial services commitments include those relating to insurance and insurance-related services.

Article XVI requires Canada to accord services and service suppliers of other WTO Members treatment no less favourable than that provided for under the terms, limitations and conditions set out in its Schedule. Under Article XVI:2, where a market access commitment is given, as it has been by Canada for insurance and insurance-related services, there are certain measures that Canada cannot maintain or adopt (unless otherwise specified in its Schedule). These prohibited measures include limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test. **On its face, this provision in combination with Canada's commitment in respect of insurance services as contained in its Schedule, would suggest that the establishment of a public monopoly after 1994 for basic insurance services would be contrary to Canada's GATS obligations (assuming that the "government authority" exception does not apply).**

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[6] Another possible exemption can be found in paragraph 2 of the Annex on Financial Services, which provides that a Member shall not be prevented from taking measures for prudential reasons, including for the protection of policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity or stability of the financial system. It also provides that where such measures do not conform to GATS, they shall not be used as a means of avoiding a Member's GATS commitments or obligations. We are of the view that the creation of a public automobile insurance system likely would not be considered a prudential measure that could be relied upon to exclude it from GATS obligations.

[7] Canada is also required under GATS to accord to services and service suppliers of a WTO Member treatment no less favourable than it accords to its own like services and service suppliers (Article XVII National Treatment) and to like services and service suppliers of any other country (Article II Most-Favoured-Nation Treatment). As we note below in the context of Canada's NAFTA obligations, the System does not on its face appear to raise possible violations of these obligations, however, additional detail would be required to ensure that its design and implementation is consistent with these and other obligations under GATS.

[8] For financial services, see GATS/SC/16 Suppl. 4/Rev. 1 (June 6, 2000).

Based on our review of Canada's commitments for insurance and insurance-related services, we note that Canada has taken a specific reservation under the commercial presence mode in respect of automobile insurance provided through public monopoly systems in existence in 1994 in Quebec, Manitoba, Saskatchewan, and British Columbia. This would appear to suggest that the establishment and maintenance of mandatory public automotive insurance programs is otherwise subject to Canada's GATS commitments.[9]

GATS Article VIII – Monopolies and Exclusive Service Suppliers[10]

Article VIII of GATS sets out certain obligations with respect to monopolies and exclusive service suppliers. Specifically, Canada is required to ensure that any monopoly supplier of a service[11] in its territory acts in a manner consistent with Canada's obligations and commitments under GATS. Canada must also ensure that where such monopoly suppliers compete in the supply of a service outside the scope of their monopoly rights, such suppliers do not abuse their monopoly position in a manner inconsistent with Canada's commitments.

Pursuant to Article VIII:4, if after the date of entry into force of the *Agreement Establishing the World Trade Organization* (January 1, 1995), Canada grants monopoly rights regarding the supply of a service covered by its specific commitments, pre-notification must be given to the GATS Trade in Services Council, and Article XXI procedures for schedule modification and compensation will apply. Under these procedures, Canada is required to enter into negotiations with other WTO Members with a view to reach an agreement on necessary compensatory adjustments.[12] **Accordingly, this suggests that if a public monopoly for automotive insurance services were to be established, Canada may be required to give notification to the WTO Council for Trade in Services and enter into negotiations with other WTO Members in order to settle on the required compensation (again, assuming that the "government authority" exception does not apply).**

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[9] It should be noted that under paragraph 1 of the Understanding on Commitments in Financial Services, notwithstanding the provisions of paragraph 1(b) of the Annex on Financial Services, WTO Members are required to list on their schedules pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. This obligation to list applies to the activities described in paragraph 1(b)(iii) of the Annex above. This could explain why Canada took reservations in respect of public automobile insurance monopolies in British Columbia, Saskatchewan, Manitoba, and Quebec in its GATS Schedule of Commitments, even though they may have been considered to be "services supplied in the exercise of governmental authority" and therefore excluded from GATS disciplines.

[10] Although other provisions of the agreements of the WTO, in particular Article XVII of the *General Agreement on Tariffs and Trade 1994*, address state enterprises, these other provisions do not apply to trade in services or GATS. They only address trade in goods.

[11] GATS Article XXVIII defines "monopoly supplier of a service" as "any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service".

[12] Under Article XXI of GATS, if agreement on adjustments is not reached, the matter may be referred to arbitration. Affected WTO Members may retaliate against Canada in the event that it implements the proposed modification or withdrawal and does not comply with the arbitration findings.

Government-to-Government Dispute Resolution

In the event that WTO Member countries, including the United States or the European Union, considered the implementation of a public automobile insurance system in the Atlantic Provinces to violate Canada's GATS obligations and commitments, they could raise the matter before the WTO's Dispute Settlement Body and request that a Panel be established to review and decide upon the issues in dispute. The Panel hearing the case would receive written submissions, conduct oral hearings, and in some cases receive expert testimony and reports.

After hearing the case, a report is issued by the Panel setting out its findings as to whether the measures in question offend GATS, and if so, its recommendations concerning compliance with the GATS obligations. Panel decisions may be appealed on points of law to the WTO's Appellate Body, which can uphold, modify or reverse the Panel's legal findings. WTO Members are expected to comply with Panel and Appellate Body reports. WTO Members may be permitted to suspend concessions extended to Canada under GATS or other WTO agreements in the event that Canada fails to comply with the recommendations set out in a Panel or Appellate Body report.

Unlike NAFTA, as discussed further below, the agreements of the WTO do not provide a mechanism through which private parties may challenge measures allegedly inconsistent with WTO Member obligations or commitments.

2. The North-American Free Trade Agreement

We have also considered the consistency of a public automobile insurance system with Canada's obligations under NAFTA, and in particular under Chapter 11 (Investment), Chapter 14 (Financial Services), and Chapter 15 (Competition Policy, Monopolies and State Enterprises). Below, we have identified potential concerns with two obligations in particular: cross-border trade in financial services (Article 1404) and expropriation and compensation (Article 1110).[13]

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[13] We have also briefly considered the application of other provisions of NAFTA Chapter 14, including Article 1405 (National Treatment) and Article 1406 (Most-Favoured-Nation ("MFN") Treatment). Upon initial review of these provisions, it would appear that these obligations would not apply since on its face the proposal to create a public insurance monopoly would not accord less favourable treatment to investors or financial institutions from the United States or Mexico than would be accorded to investors or financial institution of Canada or other countries. This would not be the case, however, if an element of the design or implementation of the System resulted in more favourable treatment to Canadian investors or financial institutions. For example, a national treatment argument could be raised if financial institutions providing basic insurance coverage were largely of U.S. or Mexican nationality, while those providing the optional or additional levels of coverage, which would not be covered under the System, were Canadian. In such a case, this distinction may be viewed as having no rational basis other than discrimination against U.S. and Mexican investors and protection for the domestic insurance industry.

Scope of NAFTA Chapter 14

Chapter 14 of NAFTA applies to federal and provincial measures[14] that are adopted or maintained by Canada relating to financial institutions of another Party[15] and investors of another Party, and their investments, in financial institutions in Canada. Chapter 14 also applies to measures that Canada adopts or maintains relating to cross-border trade in financial services. Automobile insurance is covered under Chapter 14 as it falls within the definition of "financial service".[16]

These Chapter 14 obligations address measures restricting cross-border trade in financial services (Article 1404), the granting of national treatment to another Party's investors and financial institutions (Article 1405), the granting of most-favoured nation treatment to another Party's investors and financial institutions (Article 1406), the provision of new financial services and the transfer of electronic information (Article 1407), the nationality of senior management and board of directors (Article 1408), and the application of certain investment obligations under NAFTA Chapter 11 (Article 1401:2).

NAFTA Article 1404 (Cross-Border Trade in Financial Services)

NAFTA Article 1404 prohibits Canada from adopting any measure that restricts any type of cross-border trade in financial services by cross-border financial service providers,[17] where such cross-border trade was permitted by Canada on the date of entry into force of NAFTA (January 1, 1994). Article 1416 provides that "cross-border trade in financial services" means the provision of a financial service:

> (a) from the territory of a Party into the territory of another Party,
>
> (b) in the territory of a Party by a person of that Party to a person of another Party, or
>
> (c) by a national of a Party in the territory of another Party,
>
> but does not include the provision of a service in the territory of a Party by an investment in that territory.

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[14] NAFTA Article 105 requires Canada to ensure that all necessary measures are taken in order to give effect to the provisions of NAFTA, including their observance by provincial governments.

[15] "Financial institution" is defined in NAFTA Article 1416 to mean "any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located". A "financial institution of another Party" is defined as a "financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party".

[16] NAFTA Article 1416 defines a financial service as a "service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature".

[17] NAFTA Article 1416 defines "cross-border financial service provider of a Party" to mean "a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides financial services through the cross-border provision of such services".

Cross-border trade in financial services could therefore include, for example, the provision of insurance from the United States into Canada, the provision of insurance in Canada by a Canadian person (an individual or enterprise) to a U.S. person, the provision of insurance in the United States by a U.S. person to a Canadian person, and the provision of insurance by a U.S. national (an individual) in Canada. However, there is a significant exception to these examples of cross-border trade in financial services: the provision of insurance services in Canada by a U.S. investment located in Canada is not considered to be cross-border trade in financial services.

On its face, the establishment of a public automobile insurance system in the Atlantic Provinces would appear to restrict cross-border trade in financial services since it would prevent the provision of automobile insurance services by U.S. and Mexican suppliers to Canadian consumers.

However, it is our understanding that at January 1, 1994 (and at the present time), automobile insurance could not be provided in Canada except through a commercial presence, including a branch or subsidiary of an insurance provider.[18] As noted above, the provision of services through an investment[19] is excluded from the scope of cross-border trade in financial services. Assuming that Canada has not permitted cross-border trade in automotive insurance since before January 1, 1994, NAFTA Article 1404 would not apply to prohibit the establishment of a public automobile insurance system.

In any event, even if Canada is considered to have permitted the cross-border supply of insurance services since before January 1, 1994, and the establishment of the System is considered to offend the cross-border financial service commitments under Article 1404, the following provisions of NAFTA could apply to exempt the System from these obligations.

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[18] This is consistent with GATS market access reservations taken by Canada in respect of federal and provincial measures requiring that insurance be delivered through a commercial presence in Canada. This suggests that it may not be permissible for insurance services to be provided from another country into the Atlantic Provinces or other provinces without the use of a commercial presence or investment. This is also consistent with the views of the United States Trade Representative, who has noted in its *National Trade Estimate Report on Foreign Trade Barriers* (2000) (at p.34) that a commercial presence is required to offer insurance in Canada.

[19] "Investment" is broadly defined under Articles 1139 and 1416 to include an enterprise (including any corporation, trust, partnership, sole proprietorship, joint venture or other association), a branch of an enterprise, an equity security of an enterprise, certain loans and debt securities, an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise or a share in the assets of the enterprise on dissolution, and real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes.

i. Exclusive Provision of Services by Government or a Public Entity

NAFTA Article 1401:3(b) provides that nothing in Chapter 14, including the prohibition against measures restricting cross-border trade in financial services, shall be construed to prevent Canada, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.[20]

To the extent that the public entity that is proposed to provide automobile insurance in the Atlantic Provinces does so exclusively and for the account or with the guarantee or using the financial resources of government, Article 1404 cannot be considered to prevent the establishment of the System.

ii. Monopolies and State Enterprises

The establishment of the System may be exempt from Article 1404 requirements by virtue of NAFTA's provisions concerning monopolies and state enterprises. Canada is permitted to designate monopolies under Article 1502[21], and maintain or establish state enterprises pursuant to Article 1503 of NAFTA.[22]

NAFTA Articles 1502:1 and 1503:1 provide that nothing in NAFTA shall be construed to prevent Canada from designating a monopoly or from maintaining or establishing a state enterprise, including Crown corporations under provincial law. On this basis, it may be argued that Article 1404 ought not to apply to the establishment of a public automobile insurance system since Chapter 15 requires that such provisions not be construed to prevent the creation of a monopoly or state-run enterprise.[23]

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[20] Article 1416 defines public entity as "a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party".

[21] Under Article 1502, Canada may designate a monopoly ("an entity, including a consortium or government agency, that in any relevant market in a territory of a Party is designated as a sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant"), including a government monopoly, but it must ensure that such monopolies act in accordance with Article 1502:3, which sets out the requirements that privately owned monopolies designated by Canada and any government monopoly that it maintains or designates must satisfy. A "government monopoly" does not include a monopoly owned or controlled by a provincial government.

[22] Annex 1505 defines "state enterprise", with respect to Canada, as "a Crown corporation within the meaning of the *Financial Administration Act* (Canada), a crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law". Where such state enterprises exercise any regulatory, administrative or other governmental authority delegated by Canada, Canada must ensure that they act in a manner consistent with its obligations under Chapters 11 and 14 of NAFTA.

[23] There are additional NAFTA provisions that may be relied upon in order to address any potential inconsistency of the System with NAFTA Article 1404, although the arguments are much less convincing. For example, Article 1410, which provides that nothing in Part Five of NAFTA (which includes investment, services, telecommunications, financial services, competition policy, monopolies and state enterprises, and temporary entry obligations) shall be construed to prevent Canada from adopting or maintaining measures for

Government-to-Government Dispute Resolution

Any claim that may be made against Canada with respect to Article 1404 would be litigated under the government-to-government dispute settlement provisions of NAFTA Chapter 20. Canada's failure to implement the recommendations of a NAFTA Panel Report (which usually recommends the non-implementation or removal of a measure found to be inconsistent with NAFTA), would permit the United States or Mexico to suspend "benefits of equivalent effect" extended to Canada under NAFTA.

A private entity cannot file a claim for damages against Canada under NAFTA on the basis of alleged inconsistency with Article 1404.

NAFTA Article 1110 (Expropriation and Compensation)

Article 1401:2 provides that the NAFTA Chapter 11 expropriation and compensation obligations and its investor state dispute mechanism apply to financial services.

Pursuant to NAFTA Article 1110, unless certain conditions have been satisfied, Canada is prohibited from directly or indirectly nationalizing or expropriating investments of U.S. or Mexican investors or from taking measures tantamount to the expropriation of such investments. Article 1110:1 provides that:

> No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such investment, except:
>
> (a) for public purpose;
>
> (b) on a non-discriminatory basis;
>
> (c) in accordance with due process of law and Article 1105:1; and

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prudential reasons, including the protection of policy-claimants and policy-holders and the maintenance of the integrity and stability of Canada's financial system. In our view, it would be unlikely that "reasonable measures for prudential reasons" would include the creation of a public automobile insurance system.

Furthermore, NAFTA Article 1409:1 provides that the obligations contained in Articles 1403 through 1408, including those with respect to cross-border trade in services, do not apply to any existing non-conforming measures (those measures in effect on the date of entry into force of NAFTA, i.e., January 1, 1994) maintained by Canada at either the federal or provincial level and as set out in Canada's Schedule to Annex VII. It also provides that these obligations do not apply to the continuation or prompt renewal of any such non-conforming measures or any amendments to such non-conforming measures to the extent that they do not decrease the conformity of the measures as they existed immediately before the amendments. Article 1409:2 provides that these obligations do not apply to any non-conforming measures that Canada may adopt or maintain after the coming into force of NAFTA as are specifically listed in its Schedule to Annex VII. We have reviewed the reservations taken at the federal level in Annex VII and they do not appear to cover the provision of state-run automotive insurance by the provinces. We have confirmed with Finance Canada officials that there were no reservations taken by Canada for existing non-conforming measures at the provincial level in respect of public automobile insurance systems.

(d) on payment of compensation in accordance with paragraphs 2 through 6.

Meaning of Expropriation or Measures Tantamount to Expropriation

There have been several NAFTA and other arbitral tribunals that have dealt with claims of expropriation.[24] It is well established in international law and reflected in the decisions of these tribunals that an expropriation can exist short of a formal or legal transfer of title to property, and that such a "taking" need not be deliberate or intended. A Party may be considered to have expropriated property when its interference with the use of property is viewed as being unreasonable and has the effect of significantly depriving the owner of the use or expected economic benefit of the property. However, not just any kind of interference by a Party with the activities or operations of a foreign investor will constitute expropriation which requires compensation. A substantial deprivation usually amounting to a lasting removal of ownership benefits or economic rights is required. Examples of various NAFTA and other international tribunal expressions of these principles are as follows:

> ...expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State (*Metalclad Corporation,* at para. 103).
>
> The term "expropriation" in Article 1110 must be interpreted in light of the whole body of state practice, treaties and judicial interpretations of that term in international law cases. In general, the term "expropriation" carries with it the connotation of a "taking" by a governmental type authority of a person's "property" with a view to transferring ownership of that property to another person, usually the authority that exercised its *de jure* or *de facto* power to do the "taking".
>
> The Tribunal accepts that, in legal theory, rights other than property rights may be "expropriated" and that international law makes it appropriate for tribunals to examine the purpose and effect of governmental measures (*S.D. Myers,* at paras. 280 to 281).

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[24] For example, see *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award (December 16, 2002), available at http://www.worldbank.org/icsid/cases/awards.htm; *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (August 30, 2000), available at http://www.worldbank.org/icsid/cases/awards.htm; *S.D. Myers, Inc. v. Government of Canada*, Partial Award (November 13, 2000), available at http://www.dfait-maeci.gc.ca/tna-nac/disp/SDM_archive-en.asp; *Pope & Talbot Inc. v. Government of Canada,* Interim Award (June 26, 2000), available at http://www.dfait-maeci.gc.ca/tna-nac/phases-en.asp#1; *Tippetts v. TAMS-ATTA* (1985), 6 Iran-U.S.C.T.R 219; and *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (February 17, 2000), available at http://www.worldbank.org/icsid/cases/awards.htm.

> An expropriation usually amounts to a lasting removal of the ability of an owner to make use of its economic rights although it may be that, in some contexts and circumstances, it would be appropriate to view a deprivation as amounting to an expropriation, even if it were partial or temporary (*S.D. Myers*, at para. 283).
>
> While it may sometimes be uncertain whether a particular interference with business activities amounts to an expropriation, the test is whether that interference is sufficiently restrictive to support a conclusion that the property has been "taken" from the owner…under international law, expropriation requires a "substantial deprivation" (*Pope & Talbot, Interim Award*, at para 102).
>
> [The following excerpt from the American Law Institute's Restatement of the Law Third, Foreign Relations of the United States, was cited with approval in the Tribunal's decision.] A state is responsible as for an expropriation of property under Subsection (1) when it subjects alien property to taxation, regulation, or other action that is confiscatory, or that prevents, unreasonably interferes with, or undue delays, effective enjoyment of an alien's property or its removal from the state's territory… A state is not responsible for loss of property or for other economic disadvantage resulting from bona fide general taxation, regulation, forfeiture for crime, or other action of the kind that is commonly accepted as within the police power of states, if it is not discriminatory… (*Marvin Feldman*, at para. 105).
>
> A deprivation or taking of property may occur under international law through interference by a state in the use of that property or the enjoyment of its benefits, even where legal title to that property is not affected.
>
> While assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral. The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact (*Tippetts*).
>
> As is well known, there is a wide spectrum of measures that a state may take in asserting control over property, extending from limited regulation of its use to a complete and formal deprivation of the owner's legal title…
>
> There is ample authority for the proposition that a property has been expropriated when the effect of the measures taken by the state has been to deprive the owner of title, possession or access to the benefit and economic use of his property (*Compañia del Desarrollo de Santa Elena S.A.* at paras. 76 to 77).

The phrase "tantamount to expropriation" has been considered by Chapter 11 arbitral tribunals not to expand or extend beyond the term "expropriation", but to encompass the concept of "creeping expropriation". Examples of Chapter 11 arbitral tribunal expressions of these principles are as follows:

> "Tantamount" means nothing more than equivalent. Something that is equivalent to something else cannot logically encompass more. No authority cited by the Investor supports a contrary conclusion (*Pope & Talbot, Interim Award,* at para. 104).
>
> The Tribunal agrees with the conclusion in the Interim Award of the *Pope & Talbot* Arbitral Tribunal that something that is "equivalent" to something else cannot logically encompass more. In common with the *Pope & Talbot* Tribunal, this Tribunal considers that the drafters of the NAFTA intended the word "tantamount" to embrace the concept of so-called 'creeping expropriation', rather than to expand the internationally accepted scope of the term expropriation (*S.D. Myers,* at para. 286).
>
> Regulations can indeed be characterized in a way that would constitute creeping expropriation … Indeed, much creeping expropriation could be conducted by regulation and a blanket exception for regulatory measures would create a gaping loophole in international protection against expropriation (*Pope & Talbot, Interim Award*, at para. 99).
>
> … Article 1110 deals not only with direct takings, but indirect expropriation and measures "tantamount to expropriation," which potentially encompass a variety of government regulatory activity that may significantly interfere with an investor's property rights. The Tribunal deems the scope of both expressions to be functionally equivalent. Recognizing direct expropriation is relatively easy: governmental authorities take over a mine or factory, depriving the investor of all meaningful benefits of ownership and control. However, it is much less clear when governmental action that interferes with broadly-defined property rights -- an "investment" under NAFTA, Article 1139 – crosses the line from valid regulation to a compensable taking, and it is fair to say that no one has come up with a fully satisfactory means of drawing this line.
>
> …The Restatement defines "creeping expropriation" in part as a state seeking "to achieve the same result [as an outright taking] by taxation and regulatory measures designed to make continued operation of a project uneconomical so that it is abandoned" (Restatement, Section 712, Reporter's Note 7). Since the Tribunal believes that creeping expropriation, as defined in the Restatement, noted above, is a form of indirect expropriation, and may accordingly constitute measures "tantamount to expropriation", the Tribunal includes consideration of creeping expropriation along with its consideration of these closely related terms (*Marvin Feldman*, at paras. 100 to 101)

Based on our review of the above jurisprudence, to the extent that the replacement of private automobile insurance with a public insurance system were to deprive private insurance providers of the use or expected economic benefit of their investments, it could be argued that this constitutes an expropriation or a measure tantamount to expropriation of a U.S. or Mexican investor's investment. Although the implementation of the system does not involve any formal or legal transfer of title from existing automobile insurance providers to the governments of the Atlantic Provinces, it could be viewed by an arbitral tribunal as preventing existing providers from supplying

automobile insurance in the Atlantic marketplace and thereby constituting expropriation requiring the payment of compensation to affected investors.

It is important to be aware that determining whether a measure amounts to expropriation requiring compensation is a highly fact-specific exercise. For example, where basic automobile insurance coverage constitutes a very small proportion of an insurance provider's business, that provider would not have as strong an expropriation argument as would another provider whose primary business is the provision of basic automobile insurance.

Application of Monopoly, State Enterprise and Public Entity Exceptions

As noted above in the analysis of Canada's Article 1404 obligations, Articles 1401:3 (activities using the financial resources of the government), 1502 (monopolies), and 1503 (state enterprises), all provide a basis for arguing that Article 1404 can not be construed to prevent the establishment of a public automobile insurance system in the Atlantic Provinces. With respect to the compensation obligation under Article 1110, however, it is difficult to construe this provision as preventing Canada from engaging in any of these activities since Article 1110 does not prohibit NAFTA Parties from expropriating or taking measures tantamount to expropriation under NAFTA. They must only meet certain requirements when they implement such measures, including the provision of compensation to investors. **Accordingly, NAFTA Articles 1401:3, 1502:1 and 1503:1 do not appear to exempt state-run automotive insurance programs from challenge under the expropriation and compensation provisions of Article 1110.**[25]

Private Investor State Claims

Under Articles 1116 and 1117, U.S. and Mexican investors may submit to arbitration claims that the Canadian government has violated its investment obligations (including those under Article 1110) and that they have incurred loss or damages by reason of, or arising out of such breaches. These claims may be brought by such investors on their own behalf or on behalf of a Canadian enterprise that they own or control directly or indirectly.

Claimants may seek the appointment of an arbitral tribunal (operating under the rules of arbitration of either the United Nations Commission on International Trade Law or the Additional Facility of the International Centre for Settlement of Investment Disputes) which would determine whether the measures taken were consistent with Canada's expropriation and compensation obligations, and other investment obligations, and the quantum of damages, if any, to be awarded to the investors.

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[25] For the same reasons, we are also of the view that Article 1410, which provides that nothing in Part Five of NAFTA shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, would not relieve Canada of its obligation to compensate U.S. and Mexican investors whose investments were considered to be expropriated through the establishment of the System. Furthermore, the reservations set out in Article 1409 (existing non-conforming measures and future non-conforming measures) do not apply in respect of the Article 1110 expropriation and compensation obligations.

In the instant case, if the System is implemented in the Atlantic Provinces, U.S. or Mexican-owned insurers providing automobile insurance in the Atlantic Provinces could bring a claim against the Canadian government under the private investor state dispute settlement provisions of NAFTA Chapter 11 on the basis that the establishment of a public automobile insurance system constitutes an expropriation or a measure tantamount to expropriation, which requires, *inter alia*, the payment of compensation.

Paragraphs 2 through 6 of Article 1110 require that any compensation paid to U.S. and Mexican investors must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. NAFTA also provides for the use of certain valuation criteria, such as going concern value, asset value including declared tax value of tangible property, and "other criteria, as appropriate, to determine fair market value". The compensation must be paid to affected U.S. and Mexican investors without delay and must be fully realizable. The compensation must include interest at a commercially reasonable rate from the date of expropriation until the date of actual payment. Furthermore, the compensation paid to U.S. and Mexican investors must be freely transferable without delay in accordance with NAFTA's obligations pertaining to transfers of profits, proceeds, and other payments.

Government-to-Government Dispute Resolution

In addition to being the subject of an investor state challenge, violation of expropriation and compensation obligations may be raised by the governments of either the United States or Mexico under the government-to-government dispute settlement provisions contained in NAFTA Chapter 20, as described above with respect to the potential violation of Article 1404.

We note that in the past the United States has questioned Canada's compliance with its investment obligations under international trade agreements in the context of proposed government-run automobile insurance programs. Specifically, in 1991, the U.S. Trade Representative suggested that the introduction in Ontario of a public insurance system that would replace the system run by private companies would be tantamount to expropriation under Article 1605 of the *Canada-United States Free Trade Agreement*. Ultimately, the Ontario Government decided not to create a publicly-owned automobile insurance system, however, it is unclear on what basis this decision was made.

Claims of expropriation may also be made outside the ambit of international trade agreements on the basis of existing common law obligations. We have not conducted thorough research into these common law principles as they would apply in the instant case, however, the Supreme Court of Canada's decision in *Manitoba Fisheries Ltd. v. R.*[26] may be of particular relevance. In that case, the Court considered expropriation claims of the owner of a fish exporting business following the federal government's establishment of a statutory government monopoly for the exportation of fish. The Court found that the goodwill of the business as a going concern as it existed prior to the establishment of the government monopoly constituted property of the plaintiff, and that the creation of this government monopoly had the effect of depriving the plaintiff of its goodwill and rendering its physical assets virtually useless. The Court also found that the plaintiff was entitled to compensation equal to the fair market of the value of its business as a going concern since there was no provision in the applicable legislation which allowed for the taking of property by the government without compensation.

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[26] 88 D.L.R. (3d) 462 (1978).

3. Canada's Foreign Investment Promotion and Protection Agreements

Canada has concluded FIPAs with over twenty countries.[27] These contain expropriation and compensation provisions similar to those described above with respect to NAFTA Chapter 11. Article VIII of the *Agreement Between the Government of Canada and the Government of Barbados for the Reciprocal Promotion and Protection of Investments* is a typical example of the FIPA expropriation and compensation obligation:

> Investments[28] or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. such compensation shall be based on the fair market value of the investment or returns expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier, shall be payable from the date of expropriation with interest at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

As is the case with NAFTA, these agreements do not appear to contain any provisions that would relieve Canada of the obligation to compensate FIPA investors in the event that the establishment of a public automotive insurance system in the Atlantic Provinces was considered to be an expropriation of their investments or returns or a measure having an equivalent effect.[29]

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[27] Canada has concluded FIPAs with Poland (November 22, 1990), Russia (June 27, 1991), Argentina (April 29, 1993), Czech and Slovak Republics (March 9, 1992), Hungary (November 21, 1993), Ukraine (July 24, 1995), Latvia (July 27, 1995), Trinidad and Tobago (July 8, 1996), the Philippines (November 13, 1996), Barbados (January 17, 1997), Romania (February 11, 1997), Ecuador (June 6, 1997), Egypt (November 3, 1997), Venezuela (January 28, 1998), Panama (February 13, 1998), Thailand (September 24, 1998), Armenia (March 29, 1999), Uruguay (June 2, 1999), Lebanon (June 19, 1999), Costa Rica (September 29, 1999) and Croatia (January 30, 2001). Canada has also signed FIPAs with South Africa and El Salvador, however these have not yet come into force. The *Canada Chile Free Trade Agreement* also contains investment commitments which are very similar to those described above in the context of NAFTA.

[28] "Investment" is broadly defined under the FIPA as any kind of asset owned or controlled directly, or indirectly through an investor of a third state, by an investor of one Contracting Party in the territory of the other Contracting Party and includes: traditional property rights; rights in companies (shares, stocks, bonds, etc.); goodwill; monetary claims and claims to performance; intellectual property rights; and concessions and other similar rights. It does not include real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes. "Returns" are defined as all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income.

The FIPAs also contain dispute settlement mechanisms similar to those described above with respect to NAFTA. Claims may be filed by private investors against the government of Canada For example, under the Barbados FIPA, an "investor", i.e. any natural person possessing the citizenship of or permanently residing in Barbados, or any enterprise incorporated or duly constituted under Barbadian law, and who makes the investment in Canada, could challenge the establishment of the System as an expropriation or a measure having an effect equivalent to expropriation of its investments or returns.

FIPA disputes may also be subject to government-to-government dispute settlement procedures.

4. The Agreement on Internal Trade

The *Agreement on Internal Trade* is an agreement negotiated between the government of Canada and the governments of each of the provinces and territories. The AIT contains obligations pertaining to measures restricting or preventing the movement of goods, services or investments across provincial boundaries (Article 402 – Right of Entry and Exit), measures that are adopted or maintained by a Party relating to investors of a Party and enterprises (Chapter 6), government enterprises and monopolies (Article 609) and consumer-related measures and standards (Chapter 8).

The AIT does not, however, apply to measures in relation to financial institutions or financial services.[30] AIT Article 1806 (Financial Sector) provides as follows:

> 1. Except for measures referred to in paragraphs 7 through 10 of Annex 807.1,[31] nothing in this Agreement applies to measures adopted or maintained by a Party or a public body that exercises its

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[29] The FIPAs, as does NAFTA, provide that nothing in the agreements shall be construed to prevent Contracting Parties from adopting or maintaining reasonable measures for prudential reasons. For the same reasons outlined above, even if there were prudential reasons for establishing the System, we do not believe that this exemption would relieve Canada from its obligation to compensate FIPA investors whose investments or returns have been expropriated.

[30] AIT Article 200 defines a financial institution as "a person that is subject to, or governed by, a measure adopted or maintained by a Party or by a public body that exercises its regulatory or supervisory authority delegated by law, in respect of and by reason of the production or provision of a financial service". "Financial service" is defined as "any service or product of a financial nature that is subject to, or governed by, a measure adopted or maintained by a Party or by a public body that exercises regulatory or supervisory authority delegated by law and includes, but is not limited to: deposit-taking; loan and investment services; insurance; estate, trust and agency services; securities; and all forms of financial or market intermediation including, but not limited to, the distribution of financial products".

[31] Annex 807.1 (Reconciliation of Consumer-Related Measures and Standards) provides for the adoption of harmonized legislation respecting the disclosure of cost of credit.

> regulatory or supervisory authority delegated by law in relation to financial institutions or financial services.
>
> 2. For greater certainty, nothing in this Agreement shall be construed to lessen the scope of the limitation set out in paragraph 1, such limitation prevailing to its full extent over any provision having some connection therewith.
>
> 3. For greater certainty, persons shall be considered to be financial institutions only in respect of, and to the extent of, their provision of financial services.

Since an Atlantic Province public automobile insurance system would likely be considered to be a measure adopted in relation to financial services, the System would not generally be subject to the AIT according to Article 1806.

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We have identified certain provisions within GATS, NAFTA, and Canada's FIPAs which raise significant concerns with respect to the consistency of a public automobile insurance system with Canada's obligations under these international trade and investment agreements.

Under these agreements, the federal government is responsible for the negotiation and settlement of disputes, and must address and defend any complaints or proceedings that are brought by WTO Member , NAFTA or FIPA governments, or by private NAFTA or FIPA investors. The federal government is also required to ensure that the Provinces comply with NAFTA, GATS, and FIPA obligations and commitments

Accordingly, because these are programs created and implemented at the provincial level with provincial concerns and objectives at stake, the implementation of a public insurance system, and the negotiation or defence of any related disputes under Canada's investment and trade agreements, will require close cooperation and coordination between the federal government and the relevant provincial governments.

We trust that the foregoing analysis addresses your concerns in connection with this matter. Please do not hesitate to contact us should you have additional questions or concerns or if you require any copies of the authorities or provisions referred to herein.

THE IMPACT OF INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS: QUESTIONS AND ANSWERS

1. What are the relevant international trade and investment agreements that must be considered in the establishment of a public automobile insurance system?

The *General Agreement on Trade in Services* ("GATS") of the World Trade Organization ("WTO"), the *North American Free Trade Agreement* ("NAFTA"), and other bilateral trade and investment agreements, including Canada's foreign investment promotion and protection agreements, must all be considered for purposes of establishing a public automobile insurance system in the Atlantic Provinces.

Of greatest relevance are Canada's GATS commitments with respect to financial services, and the foreign investment obligations contained in Chapter 11 of NAFTA.

Canada is also subject to investment protection obligations under the *Canada-Chile Free Trade Agreement* and foreign investment protection agreements concluded with the following countries: Poland, Argentina, the Czech Republic, the Slovak Republic, Russia, Hungary, Ukraine, Philippines, Barbados, Venezuela, Egypt, Armenia, Lebanon, Croatia, Latvia, Trinidad and Tobago, Ecuador, Panama, Thailand, Uruguay, Costa Rica, and Romania (collectively, the "FIPAs").

The Canadian *Agreement on Internal Trade* does not apply to financial services, including insurance services.

2. What are the relevant obligations under each of these agreements?

Where a WTO Member has made market access commitments in its GATS Schedules of Specific Commitments, as has Canada in relation to financial services, and specifically insurance and insurance-related services, measures limiting market access in these sectors are prohibited under GATS unless otherwise specified in its Schedule. These prohibited measures include limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, or exclusive service suppliers. Although Canada has claimed reservations (i.e., exceptions) from its market access commitments for public automobile insurance systems in the Provinces of Quebec, Manitoba, Saskatchewan, and British Columbia, similar reservations were not taken for public automobile insurance systems in the Atlantic Provinces.

Under NAFTA investment obligations, Canada would be required to pay compensation to U.S. and Mexican investors if Canada were to directly or indirectly nationalize or expropriate their investments or take measures that are tantamount to expropriation of their investments. To the extent that the replacement of private automobile insurance with a mandatory public insurance system were to deprive private insurance providers of the use or expected economic benefit of their investments, it could be argued that this constitutes an expropriation or a measure tantamount to expropriation under NAFTA. Similar compensation obligations apply to Canada under its numerous FIPAs.

3. Do these obligations apply to provincial regulations or programs?

Yes. The GATS and NAFTA obligations discussed above apply to measures taken by federal, provincial and local governments. Under GATS, the federal government is obligated to take reasonable measures as may be available to it to ensure that regional and local governments and authorities observe Canada's GATS commitments. Under NAFTA, Canada must ensure that all necessary measures are taken to give effect to the provisions of NAFTA, including their observance by provincial and local governments. As is discussed further below, in the event of any alleged breach of Canada's obligations under GATS or NAFTA, the federal government is responsible for responding to the allegations and when necessary, for providing compensation in the manner required under Canada's treaty obligations.

The FIPAs do not contain any provisions explicitly requiring Canada to ensure that provincial governments comply with the obligations set out in these agreements. However, as a matter of customary international law, the federal government is responsible for the acts of its provincial and local governments.

4. Are there any reservations or exceptions under these international agreements which may allow for the establishment of a public automobile insurance system?

GATS does not apply to "services supplied in the exercise of governmental authority" even if such services are within sectors otherwise covered by specific commitments. The establishment of a public automobile insurance system by a WTO Member may qualify for this exception to GATS obligations provided that: (i) the insurance provider is a "public entity", i.e. owned or controlled by government, principally engaged in carrying out governmental functions or activities for governmental purposes, and not principally engaged in supplying financial services on commercial terms, (ii) its activities are conducted for the account or with the guarantee or using the financial resources of the government, and (iii) the WTO Member does not allow its financial service suppliers to conduct such activities in competition with the public entity.

If the provision of automobile insurance through a public entity is not considered to be "services supplied in the exercise of governmental authority", and if monopoly rights are granted to the public entity for purposes of supplying automobile insurance services, GATS would require that pre-notification be given to the WTO's Trade in Services Council and that negotiations be entered into with other WTO Members with a view to reaching an agreement on necessary compensatory adjustments. Canada would therefore be required to provide concessions and commitments in other areas to compensate for reduced access to its automobile insurance market.

NAFTA and the FIPAs do not contain any exceptions to the obligation to provide compensation for expropriation or measures tantamount to expropriation.

5. Do NAFTA's provisions allowing for the designation of monopolies and state enterprises, such as a public automobile insurance provider, relieve Canada from its obligation to compensate investors?

No. NAFTA does provide that nothing in the agreement shall be construed to prevent Canada from designating a monopoly or from maintaining or establishing a state enterprise. However, this does not, in our view, avoid the requirement to provide compensation to investors where the establishment of a monopoly or state enterprise is determined to be an expropriation or a measure tantamount to expropriation of the investments of NAFTA investors.

6. What are the consequences for failing to comply with the obligations arising under these agreements?

GATS

In the case of an alleged violation of GATS, any WTO Member, including the European Union and the United States, could file a complaint with the WTO's Dispute Settlement Body requesting that a Panel be established to review the consistency of any Canadian measures with the obligations and specific commitments under GATS. The resolution of disputes under GATS and other WTO agreements is carried out on a government-to-government basis. The Canadian government would be responsible for defending the measures at issue during the consultation and panel process.

The WTO Panel hearing the case would receive written submissions, conduct oral hearings, and in some cases receive expert testimony and reports. After hearing the case, the Panel issues a report setting out its findings as to whether the measures in question offend GATS, and if so, its recommendations concerning compliance with GATS obligations. Panel decisions are appealable on points of law to the WTO's Appellate Body, which can uphold, modify or reverse the Panel's legal findings. WTO Members are expected to comply with Panel and Appellate Body reports. Failure to comply with a report can result in the suspension of concessions extended to Canada by other WTO Members under GATS or other WTO agreements.

NAFTA

The U.S. or Mexican Governments could challenge the establishment of a public automobile insurance system under the government-to-government dispute settlement provisions of NAFTA. Canada's failure to implement the recommendations of a NAFTA Panel Report (which usually recommends the non-implementation or removal of a measure found to be inconsistent with NAFTA), would permit the United States or Mexico to suspend "benefits of equivalent effect" extended to Canada under NAFTA.

We note that proposals for the implementation of a public automobile insurance system have already been the subject of controversy under the Canada-United States Free Trade Agreement ("CUSFTA"). It is our understanding that in 1991, the United States took the position that the introduction of a public insurance system in Ontario that would replace the system run by private companies would be tantamount to expropriation under CUSFTA. Because Ontario did not proceed with the establishment of a public system, the United States did not file a formal complaint.

Furthermore, the establishment of a public automobile insurance system could result in U.S. and Mexican investors submitting before an independent international arbitral tribunal claims against the federal government for damages or losses arising out of Canada's breach of its investment obligations. In the instant case, these private investors would be in a position to file a claim against Canada alleging that the establishment of a public automobile insurance system constitutes expropriation or a measure tantamount to expropriation for which no compensation has been provided in accordance with NAFTA's investment obligations. NAFTA's investor-state mechanism provides for the appointment of an arbitral tribunal (operating under the rules of arbitration of either the United Nations Commission on International Trade Law or the Additional Facility of the International Centre for Settlement of Investment Disputes) which would determine whether the measures taken were consistent with Canada's expropriation and compensation obligations, and the quantum of damages, if any, to be awarded to the investors.

The FIPAs contain similar obligations and remedies regarding expropriation and compensation claims of private investors.

7. If the establishment of a public automotive insurance system is considered to be an expropriation or measure tantamount to expropriation under NAFTA, will compensation have to be paid to current providers of automobile insurance, and if so, who must pay and how much?

If the establishment of a public automobile insurance program is determined to be an expropriation or a measure tantamount to expropriation of private NAFTA investors' investments, Canada would be obligated to compensate NAFTA investors for this deprivation. NAFTA provides that the expropriation must be effected for a public purpose, on a non-discriminatory basis, and in accordance with due process of law and the minimum standard of treatment (treatment in accordance with international law, including fair and equitable treatment and full protection and security). In addition to considering the payment of compensation, consideration will have to be given to ensuring that these other requirements are satisfied.

Under NAFTA, the compensation paid to U.S. and Mexican investors must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. NAFTA also provides for the use of certain valuation criteria, such as going concern value, asset value including declared tax value of tangible property, and "other criteria, as appropriate, to determine fair market value". The compensation must be paid to affected U.S. and Mexican investors without delay and must be fully realizable. The compensation must include interest at a commercially reasonable rate from the date of expropriation until the date of actual payment. Furthermore, the compensation paid to U.S. and Mexican investors must be freely transferable without delay in accordance with NAFTA's obligations pertaining to transfers of profits, proceeds, and other payments.

The NAFTA dispute settlement provisions apply to the Canadian government, and not the provincial governments. Accordingly, if any required compensation under NAFTA is not provided to investors, the federal government will be responsible for the payment of any award arising out of an investor-state dispute.

8. Why are British Columbia, Saskatchewan, Manitoba, and Quebec permitted to provide automobile insurance through a public model, despite the existence of these international trade and investment obligations?

British Columbia, Saskatchewan, Manitoba, and Quebec all provide public automobile insurance. Under GATS, Canada has taken specific market access reservations in respect of these four insurance programs. (Canada is required to identify these programs in its Schedule of Commitments regardless of whether they are considered to be inconsistent with GATS requirements.) Automobile insurance provided through these programs may also be considered "services supplied in the exercise of governmental authority" (as described in the response to Question 4 above), and therefore not subject to the GATS financial services obligations.

As far as NAFTA's expropriation and compensation obligations are concerned, there appear to be no exceptions or reservations for these particular public insurance programs. However, since these programs were established prior to the coming into force of NAFTA, the expropriation, if it is indeed considered as such, would have been effected prior to the time that these obligations applied to Canada under NAFTA. It is a principle of international law that a State is not responsible for a breach of a treaty obligation if that treaty is not in force at the time of the alleged breach. Accordingly, this may explain why these other public automobile insurance programs have not been challenged under NAFTA.

9. **What are the relative roles of the federal and provincial governments in the negotiation and litigation of disputes arising under these international trade and investment agreements?**

Under GATS, NAFTA, and Canada's other trade and investment agreements, the federal government is responsible for the negotiation and settlement of disputes. The federal government is responsible for addressing and defending any complaints or proceedings that are brought by WTO Member, NAFTA or FIPA governments, or by private NAFTA or FIPA investors. The federal government is also required to ensure that the Provinces comply with NAFTA, GATS, and FIPA obligations and commitments

Accordingly, because these are systems created and implemented at the provincial level with provincial concerns and objectives at stake, the establishment of a public insurance system, and the negotiation or defence of any related disputes under Canada's investment and trade agreements, will require close cooperation and coordination between the federal government and the relevant provincial governments.

LEGAL IMPLICATIONS OF ESTABLISHING AN ATLANTIC CANADA PUBLIC AUTOMOBILE INSURANCE SYSTEM

OPINIONS FROM THE ATLANTIC CANADA DEPARTMENTS OF JUSTICE

TAB 5

Legal Implications of an Atlantic Provinces Public Automobile Insurance Provider

The Atlantic Insurance Harmonization Task Force requested the Attorneys General of the four Atlantic Provinces to provide an opinion with respect to a number of issues relevant to the establishment of a public automobile insurance provider. This is a consolidation of those opinions and did not require significant additional research. The opinions provided include somewhat more discussion of the legal points under consideration than was thought necessary to include here for the general reader. The Task Force thanks the Attorneys General and their departments for their assistance with these matters, and recognizes the need to consult more fully with them in the design of the exact mechanism to provide public insurance coverage should it be determined to implement such a system.

Clearly, the exact response to each question depends on the ultimate form the provider takes, as a monopoly or not for some or all automobile insurance products, whether it be a government department or the more probable solution of a separate corporation that is or might be an agent of one or more provincial crowns, or something else. Simply put, there are no insuperable obstacles to the creation of a regional provider but there are some legal aspects that must be considered in the design of the provider.

Those providing the opinions were asked not to direct themselves to the trade implications of the question, as that was being addressed separately. The trade implications are accordingly not addressed in this compilation.

Do the four Atlantic Provinces have the legislative authority to establish a common public insurance corporation, or can they provide themselves with it?

The provinces have the capacity to provide themselves with the authority to establish the corporation. It is probable that this solution will require legislation in each province, as has occurred in several instances in the past. Examples given include the Atlantic Lottery Corporation, the Maritime Provinces Harness Racing Commission, the Atlantic Institute of Education, the Atlantic Provinces Special Education Authority and the Maritime Provinces Higher Education Commission. Each province must have legislation authorizing the delegation of administrative authority to the new body.

Provincial authority over the general field of insurance has been certain since 1881: *Citizens Insurance Company* v. *Parsons* (1881), 7 App. Cas. 96. This is a result of the provincial authority over contracts under the general property and civil rights clause of the constitution. This authority extends even over companies that operate in several jurisdictions: *Attorney-General of Canada* v. *Attorney-General of Alberta*, [1916] 1 A. C. 588 (J.C.P.C.), the Insurance Act Reference. Federal authority is limited to federally incorporated companies and matters related to bankruptcy and insolvency.

The constitutional principle that one government can delegate authority (administrative or regulatory, not legislative) to another, or more commonly, to the agency of another, has been established in Canada since the decision of the Supreme Court of Canada in 1951 in *Prince Edward Island Potato Marketing Board* v. *Willis*, [1952] 2 S.C.R. 392. A province can incorporate a company that has extra-provincial powers: *Bonanza Creek Gold Mining Co.* v. *The King*, [1916] A.C. 566 (J.C.P.C.). Accordingly, a corporation may be established by or pursuant to the legislation of an Atlantic Province and can be given general authority over the provision of some or all automobile insurance products by each of the Atlantic Provinces. It is noteworthy that the same principles would apply to permit the establishment of a common regulatory authority for automobile insurance.

The establishment of the Insurance Corporation of British Columbia was upheld by the Supreme Court of Canada as a valid exercise of provincial powers even though it created a government - controlled monopoly that drastically curtailed the business of the private insurers, some of whom were federally incorporated. The court held that the aim of the legislation related to a matter of provincial concern within the province. *Canadian Indemnity Co.* v. *British Columbia*, [1977] 2 S.C.R. 504.

The law has not changed since the establishment of public insurance corporations with at least partial monopolies by Saskatchewan, Quebec, Manitoba and British Columbia. In the Atlantic Provinces, the only distinctive feature would be the operation of a joint program. Joint programs have been accepted in this region for decades with a sound legal foundation.

The Atlantic Provinces can, through appropriate legislation, give themselves the authority to establish a common public automobile insurance corporation, but do not have that authority at present.

The Legal Requirements for the Establishment of a Common Public Automobile Insurance Corporation

As explained, each province will have to enact parallel legislation to authorize, develop and administer a universal automobile insurance plan. Existing legislation will have to be examined to ensure there are no conflicts. Existing Insurance Acts would continue on the assumption some automobile insurance products would continue to be provided by the private sector (and they regulate more than just automobile insurance).

One factor to be considered is a mechanism for setting rates. In some "public auto" provinces this is a government decision, and in others there is an approval process to an established quasi-judicial agency. If there was an Atlantic Provinces regulatory body, that would be the obvious place to seek approval.

In establishing a public corporation it would be necessary to preclude compensation for the present private sector (probably payable under the provincial *Expropriation Acts* if there is no express exclusion).

The main legislative issue would be the extent to which the Atlantic Provinces public corporation was to have a monopoly, and also whether it could compete with the private sector in non-monopoly areas. The individual provinces have all considered some limitations on common law rights of recovery. It would facilitate the operations of any common provider if these regimes were all the same, but it is not an essential requirement.

The Legal Feasibility of the Establishment of a Common Public Automobile Insurance Corporation by the Four Atlantic Provinces

It is not permitted to incorporate an insurance corporation under some provincial corporations acts, nor can a government-owned insurance corporation be incorporated under the federal *Insurance Companies Act*. The obvious solution is incorporation by special legislation, in one or more of the Atlantic Provinces. Incorporation by special act at the federal level may expose the corporation to a greater degree of federal control than necessary. In the early years the control over basic capital requirements could make the project economically unfeasible.

Federal incorporation, by private act, is feasible but not recommended owing to the complications of additional federal regulation.

A common statutory base in each Atlantic Province would be challenging, but experience has shown it to be quite practicable.

Potential Legal Challenges by Industry

To the extent that a public monopoly will seriously affect the business interests of those companies now providing automobile insurance in Nova Scotia, it can be anticipated that there will be legal challenges to the powers of the provinces to create a joint public corporation. As we have seen, most of the potential grounds for challenge have already been addressed by the highest levels of the court system. Attention will accordingly be focussed on any new and different feature.

It seems most probable that a challenge will focus on the interprovincial nature of the corporation, since that is the most distinctive new feature.

Claims for damages could also be expected, though (outside the trade framework) they could not be expected to be very successful if the clause prohibiting compensation was drawn with reasonable care.

Would an Interprovincial Insurance Plan be Subject to Federal Regulation?

It depends. This common legal answer is especially appropriate for this question. The precise form of the interprovincial corporation, and in particular the extent to which it is a Crown agency, determines the answer. If it is effectively only an agency to implement the plans of the four Atlantic Provinces, which may or may not be the same, it is not an independent corporation and in all likelihood any claim that it would be subject to federal regulation would fail. On the other hand, if it was a quasi-commercial corporation, federal regulation would be more probable.

If the corporation were federally incorporated, it would be subject to federal regulation. If it were incorporated provincially, the answer is not as clear (or, at least, there is not the same unanimity of opinion among the Attorneys General).

After the corporation has been established for a sufficient period of time to build up its reserves and capital requirements, the question is unimportant. In the early going, it is critical.

Separately incorporated provincial corporations that follow a common plan and share resources is one suggestion that would avoid any problem.

Summary

The provinces have ample authority to control insurance. This power extends to creating a government monopoly in the provision of some or all automobile insurance products.

Each province would be required to have legislation that, at a minimum, authorizes the Governor in Council to enter into an agreement with the other provinces to establish a public automobile insurance corporation. Additional legislation would be required to establish its monopoly position. The corporation could be incorporated in one or more of the provinces.

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Jonathan Davies, Q.C.
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File No.:

August 21, 2003

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AUG 25 2003
COUNCIL OF ATLANTIC PREMIERS

Mr. Ed Cramm
Secretary to Council
The Council of Atlantic Premiers
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P.O. Box 2044
Halifax NS B3J 2Z1

Dear Sirs:

RE: Legal implications of establishing an Atlantic Canada public automobile insurance system.

The following matters have been referred to the Nova Scotia Department of Justice by the Atlantic Insurance Harmonization Task Force with a request that the Department of Justice provide an opinion on:

(a) Whether the four Atlantic Canadian Provinces have legislative authority to establish a common public automobile insurance corporation or can provide themselves with it?

(b) The legal requirements for each of the four provincial jurisdictions for the establishment of a common public insurance corporation?

(c) Whether the establishment of a common public automobile insurance corporation by the four Atlantic Provinces is legally feasible.

(d) Potential legal challenges by the industry to prevent the establishment of a common public automobile insurance corporation (excluding NAFTA, WTO, etc.).

(e) Whether an interprovincial insurance plan would be subject to federal regulation.

(f) Other issues on which we wish comment at this time.

Qualifications on the opinion

The terms of reference of the Task Force are to study the cost-benefit and legal implications of establishing an Atlantic Canadian public automobile insurance system. The present studies are not at a stage where a definitive model of a proposed common public automobile insurance program or a common corporate vehicle for the delivery of such a system are capable of final elaboration. Our opinion must therefore be based on a consideration of existing models for delivery systems for public automobile insurance systems in common law jurisdictions in Canada: British Columbia, Manitoba, and Saskatchewan. Each of these is unique to the provinces in which it operates.

In preparing this opinion we have relied on the decision in Canadian Indemnity Co. v. British Columbia (Attorney General), [1977] 2 S.C.R. 504 (S.C.C.), as authoritative. In discussing a "public automobile insurance system" we therefore use the B.C. system as the referent model and our opinion assumes a system structure which involves the statutory incorporation of a public corporation or corporations and concurrent program of mandatory automobile insurance mandated by provincial statute and linked with the public vehicle registration system of each province.

Constitutional authority to regulate insurance

Unlike banking, insurance is not specifically listed as an area of specific federal or provincial jurisdiction in the *Constitution Act, 1867.*

At the end of the 19th and in the first part of the 20th Century the federal and provincial levels of government contended in the courts for legislative power in the area. Success was divided but the largest part of the prize went to the provinces under the property and civil rights power with the federal government exercising authority respecting federal corporations.

Governments regulate insurers for the protection of consumers who often do not understand complex insurance policies and have no way to appreciate the extent of the financial responsibility of companies. Governments control insurers by requiring specific policy terms and conditions, and controlling entry to the industry by licensing, supervising performance, ensuring financial viability and inspection.

Provincial authority

Provincial authority in the field has been held to be based on the authority to regulate contracts under the property and civil rights power: Citizens Insurance Co. v. Parsons (1881), 7 App. Cas. 96. The regulation of a particular industry does not rest with the federal government under the trade and commerce power and provincial licensing schemes are valid under the property and civil rights power, even though companies may operate beyond the boundaries of the regulating province; A.-G. Can. v. A.-G. Alta. (Insurance), [1916] 1 A.C. 588. Despite several attempts at legislation by the federal government attempts to exercise criminal law, taxation, and immigration heads of authority for the regulation of insurance were all struck down as colourable attempts to interfere with civil rights in the provinces. (Hogg, Constitutional Law of Canada, 4th Ed., p. 549 ff.)

Federal authority

The federal power of regulation of the industry relates to federally incorporated companies and provincial companies on a voluntary basis: *Canadian and British Insurance Companies Act*, R.S.C. 1985, c.I-12. There is also a basis of federal authority respecting insolvency of companies which has been found to prevail over provincial legislation respecting bankruptcy of companies.

The result is that federal legislation respecting insurance is confined to the creation and authorization of federal insurance companies and the supervision of their financial health. The authority for legislation respecting the contractual relations between insurers and their customers, other than for marine insurance, is provincial.

Canadian Indemnity Co., the B.C. public insurance plan

The extent of the provincial authority has been upheld even where provincial legislation providing for compulsory automobile insurance adversely affects federally incorporated companies operating in the province.

In Canadian Indemnity Co. v. British Columbia (Attorney General), [1977] 2 S.C.R. 504 (S.C.C.), the Supreme Court of Canada upheld the legislative jurisdiction to establish a universal compulsory public insurance plan. Thirty-seven insurance companies that carried on business in Canada, including 17 Canadian corporations, attacked the validity of the British Columbia legislation (*Automobile Insurance Act*, 1973 (B.C.), c. 6, *Insurance Corporation of British Columbia Act*, 1973 (B.C.), c. 44.). That Act established a universal compulsory automobile insurance plan, "Autoplan" for the province. The companies argued that the legislation was *ultra vires* the B.C. Legislature because it related to the regulation of "trade and commerce" a matter exclusively within the jurisdiction of the federal parliament by s. 91(2) of the *British North America Act*. They also argued that the effect of the legislation was in relation to and directed at the status and capacities of federally-incorporated companies. The Supreme Court of Canada confirmed the constitutional validity of the legislation based upon its aim and purpose.

The Supreme Court held that the purpose of the legislation was to provide for the compulsory insurance of motor vehicles registered in British Columbia and of automobile drivers licensed there through a corporation incorporated in British Columbia. This created a government controlled monopoly. The impact of the legislation upon the appellant companies' automobile insurance business in British Columbia was drastic. The legislation also impacted companies with interprovincial operations, however that did not mean that the legislation was in relation to interprovincial trade and commerce. The aim of the legislation related to a matter of provincial concern within the province and therefore to property and civil rights within the province.

The Supreme Court concluded that the federal parliament has jurisdiction to create and maintain the legal existence of corporate entities, with which a province cannot interfere. However the court also held that a provincial legislature can regulate a particular business or activity within its own field of legislative power in the province. The fact that a federally-incorporated company has, by federal legislation, derived existence as a legal person with designated powers, does not mean that it is for that reason exempted from the operation of provincial statutes and regulations. It is subject to such regulation in the same way as a natural person or a provincially-incorporated company.

The decision of the Supreme court of Canada in the Canadian Indemnity case confirms the state of the law and the validity of the legislative and regulatory structures developed by British Columbia to regulate and administer public automobile insurance. All provinces in Canada, including Quebec, have legislation dealing with most aspects of insurance contracts made within their boundaries. Provincial statutes deal with the form and content of contracts and include rules about disclosure, misrepresentation, entry into force, proof of loss, notice, valuation, subrogations and other contractual provisions. In addition, provincial statutes have dealt with the possibility of conflicts between rules in different jurisdictions by making uniform rules respecting the proper law of the contact and locating it at the residence of the contract holder. The thrust of provincial insurance statutes is to protect the consumer by ensuring solvency of insurers through licensing, auditing, deposit and accounting requirements, and by regulating the terms of contracts that regulated insurers may enter into in the province. (Brown, Menzies. Brock & Blackwell, Insurance Law in Canada, v. 1, pp 1-11.)

Conclusion respecting regulation of insurance by provinces
Government supervision of the insurance industry occurs at both the federal and provincial levels. An insurer may be authorized to transact business under federal authority respecting incorporation but is subject to provincial legislation respecting licensing and the terms of contracts in those provinces where it proposes to operate. It is not necessary for a provincial insurer to have federal approval but such approval facilitates the process if the insurer wishes to operate in more than one province, as most do. An insurer is accountable to each government that has authorized it to conduct business and must establish its solvency before each.

Compulsory public automobile insurance
All Canadian provinces require motorists operating vehicles on the highway to carry motor vehicle liability insurance. Four provinces in Canada, British Columbia, Manitoba, Quebec and Saskatchewan have public compulsory insurance systems. In British Columbia, Manitoba and Saskatchewan both the extent of coverage required and the delivery method are controlled by the government through statutory corporations. Private insurers may provide additional coverage beyond required amounts and remain subject to provincial insurance Acts.

Public insurance corporations
Government established public insurance corporations provide a range of basic mandatory automobile insurance coverage. Insurance covers motorists for first party benefits payable in the event of injury or death arising from automobile accidents (optional in B.C.) and third party insurance to specified limits. These insurance requirements are mandated by special legislation: *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c. 2; *Manitoba Public Insurance Corporation Act*, R.S.M. 1987, c. P215; *Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35. However, provision of insurance Acts for residual coverage remain in place: see *Insurance Corporation Act*, R.S.B.C. 1966, c. 228, s. 39. Brown Craig, Insurance Law in Canada, V. II, pp. 17-4 - 17 -18.

Rate regulation
In the compulsory insurance jurisdictions rates for automobile insurance are established by the statutory corporations and are not subject to review by Public Utilities Boards.

Insurer - insured relationships

All compulsory insurance provinces require an application for insurance to be filed with the application for vehicle registration and payment of the basic premium. None of the compulsory schemes allow cancellation of insurance by the insurer. Manitoba and Saskatchewan permit an increased premium if an owner/operator is hazardous to himself or the public. Vehicle registration may be cancelled on non-payment of premium.

Tort rights

Public compulsory insurance limits tort rights. Manitoba has removed all tort rights while Saskatchewan has an optional scheme. There is a difference of judicial opinion whether public compulsory insurance simply constitutes a fund for compensation and are therefore non-contractual, Western Trust Co. (Administrator of Andrejcin Estate) v. British American Oil Co., [1951] 2 W.W.R. 529 (Sask. K.B., Davies J.) quoted in Foord v. Saskatchewan Government Insurance, [1989] I.L.R. 1-2469 (Sask. Q.B.).

Delegation of provincial authority: common provincial programs

The Constitution has been interpreted as imposing some limits on the capacity of the various legislative bodies to delegate their powers to each other. This limitation however has been imposed as between the federal parliament and the provincial legislatures. The decision in A.-G. N.S. v. A.-G. Canada (Nova Scotia Inter-delegation), [1951] S.C.R. 31, as subsequently interpreted has resulted in a rule that one legislative body cannot enlarge the constitutional powers of another by authorizing the latter to enact laws which would have no significance and validity independent of the legislation, Hogg, Constitutional Law of Canada, 4th Ed., p.374. However, the authority of legislatures to delegate their powers to subordinate agencies of other legislatures is amply recognized as permissible administrative inter-delegation: P.E.I Potato Marketing Board v. Willis, [1952] 2 S.C.R. 392, which upheld federal legislation which "adopted" a provincial agency and authorized it to exercise federal powers side by side with provincial powers. The result is that parliament and the provincial legislatures may delegate administrative powers to a body or official other than a primary law-making body.

Following the Willis case and Coughlin v. Ontario Highway Transport Board, [1968] S.C.R. 569, in which delegation to provincial transport boards responsibility for licensing interprovincial carriers under the *Motor Vehicle Transport Act*, it is clear that although provincial authority to legislate is limited geographically to the boundaries of the province, provincial agencies may accept delegation of authority from another level of government.

In Atlantic Canada there are a number of instances where shared administration operating in all provinces has been found beneficial. Various permutations may be possible to permit the four Atlantic provinces to delegate their authorities to a single agency. Indeed they only need to delegate to that agency their administrative and regulatory power since they may choose to enact concurrent legislation in all four provinces governing activities in each as has been done in other areas of co-operation, for example: *Atlantic Institute of Education Act*, R.S.N.S., c. 26, s. 1; *Maritime Economic Cooperation Act*, S.N.S 1992, c. 7; S.N.B.1992, c. M 1-11; *Gaming Control Act*, S.N.S. 1994-95, c.4; *Atlantic Provinces Pavilion Limited, An Act to Incorporate* (1967, c.4).

A particularly good example may be the Atlantic Provinces Special Education Authority, which provides through the co-operative efforts of the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, educational services, programs and opportunities for handicapped persons and facilities and personnel for the operation and administration of the same and for the financing thereof: *Maritime Provinces Higher Education (Nova Scotia) Act*, R.S.N.S., c. 270, s. 1; *Maritime Provinces Higher Education Act*, S.N.B. c. M-2, S.P.E.I., c. M-2; *Handicapped Persons' Education Act*. R.S., c. 194, s. 1; *Education of Aurally or Visually Handicapped Persons Act*, S.N.B. 1975, c. E-1.2

Conclusion and opinion
In our opinion based upon the authorities we have reviewed and the qualifications above, the four Atlantic Canadian Provinces have the legislative authority to establish a common public automobile insurance program to be administered by a corporation which may be established in any of the four provinces or may be established as a federal corporation and establish such corporation with authority to administer the common plan. If established federally the corporation would be subject to federal regulation pursuant to the *Insurance Companies Act*, S.C. 1991, c. 47.

Summary of opinion
Subject to the qualifications above we wish to advise that, in our opinion:

(a) (i) Each of the Atlantic Canadian provinces has legislative authority to establish a public automobile insurance corporation and to enact legislation authorizing the delivery of a program of compulsory automobile liability insurance by such a corporation.

(ii) The Atlantic provinces may effect a common purpose by establishing concurrent legislative programmes and may delegate to a non-legislative authority created by them administrative responsibility for such programmes subject to the enactment of authorizing legislation in each of the jurisdictions.

(b) A common public automobile insurance corporation would be required to meet the requirements of incorporation in the jurisdiction in which it is incorporated for insurance companies unless specially incorporated or exempted in the jurisdiction of incorporation and, if incorporated federally, would be subject to federal jurisdiction respecting incorporation of such companies. It would also be required to meet the regulatory requirements of any province in which it operates.

(c) The establishment of a common public automobile insurance corporation by the four Atlantic provinces is legislatively feasible because it is possible (see (a) & (b)) but would require legislative co-operation and administrative co-ordination which may not be practicable, manageable, convenient or serviceable over the long term.

(d) Legal challenges by the industry will focus on areas of legislative jurisdiction that depart from established models of government control and regulation that have been found to be within the constitutional legislative authority of the provinces. To the extent that any new model departs from those schemes, it will be subject to scrutiny and possible legal challenge.

(e) An interprovincial insurance plan would only be subject to federal regulation if incorporated federally.

(f) There are no other issues on which we wish to comment at this time.

We thank you for the opportunity to provide this opinion. We would be happy to meet with you to discuss the opinion should it be required.

Yours sincerely,

Jonathan Davies

/jd
c. Douglas J. Keefe, Q.C.
William M. Wilson, Q.C.

Attorney General
Procureur général

New Nouveau Brunswick

August 26, 2003

VIA FAX & COURIER

Ed Cramm, Secretary
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RECEIVED
AUG 26 2003

Dear Mr. Cramm:

Re: Terms of Reference, Atlantic Insurance Harmonization Task Force

This is in response to your letter dated July 29, 2003 requesting our assistance in responding to Section 2 of the Terms of Reference developed by the Atlantic Insurance Harmonization Task Force.

Section 2 of the Terms of Reference consists of a list of 5 issues. In this opinion, each issue will be addressed separately under its proper heading except for paragraphs 2 a) and 2 e) of the Terms of Reference which have been consolidated as they require a review of the exclusive powers given to the Parliament of Canada and the Provincial Legislatures under the *Constitution Act, 1867*.

In preparing a response to your request, such matters of law as we have deemed necessary as a basis for or relevant to the legal opinion hereinafter expressed have been considered. The following response to the issues identified in the Terms of Reference is subject to the legal structure, types of powers and capacities which would be conferred on an inter-provincial insurance corporation.

I. 2 a) **To determine whether the four Atlantic Provinces have the legislative authority to establish a common public automobile insurance corporation or can provide themselves with it;**

2 e) **To determine whether an inter-provincial government insurance plan be (sic) subject to federal regulation.**

The Atlantic Provinces, acting either individually or in conjunction, appear to have the legal capacity to establish an automobile insurance corporation. The extent to which federal regulation would be required in the context of an inter-provincial insurance plan will depend on the nature of the powers to be conferred on such a regional insurance corporation.

Subsection 92(13) of the *Constitution Act, 1867*, assigns to provinces exclusive legislative competence with respect to "property and civil rights in the province". Based on such authority, a province would have competence to regulate with respect to the business of insurance, regardless of the origin of the insurance company.

Under the provincial power of incorporation contained in subsection 92(11) of the *Constitution Act, 1867*, a province is competent to create a corporation with limited extra-provincial capacities (*Canadian Indemnity Co. et al.* v. *British Columbia (Attorney General)*, [1997] 2 S.C.R. 504). A province cannot confer actual powers and rights to be exercised outside its territorial boundaries. However, it can create a corporation that may receive powers and rights outside such province pursuant to the laws of other provinces in which the corporation operates (*Bonanza Creek Gold Mining Co.* v. *The King*, [1916] A.C. 566 (P.C.)). Such a corporation could also validly receive powers and capacities to act under federal legislation (*Prince Edward Island (Potato Marketing Board)* v. *H.B. Willis Inc.*, [1952] 2 S.C.R. 392).

It could be feasible for one province or several provinces acting in conjunction, to create a corporation that would deal in the provision of insurance in each of the Atlantic Provinces pursuant to powers and capacities conferred to it by each province respectively. It could also be feasible for such an entity to receive powers and capacities under federal law, which would involve either general powers such as those conferred through federal incorporation or a specific delegation of federal power as in the *Prince Edward Island (Potato Marketing Board)* case, *supra*. However, a federal incorporation may attract certain difficulties when such entity is dealing in the business of insurance.

The federal Parliament has enacted the *Insurance Companies Act*, c. 47, S.C. 1991, which appears to limit the ability of the Crown or its agents to apply for incorporation or be a director of a federally incorporated insurance company (see subsection 23(1), paragraph 168(1)(g) and (h) and subsection 168(3)). If the federal *Insurance Companies Act* is interpreted to prohibit a province from incorporating, or being a director of, a federally incorporated insurance company, this raises the issue of whether such federal legislation is valid as a matter within federal legislative competence or *ultra vires* the federal Parliament. Authorities would appear to indicate that it could be persuasively argued that such provisions

of the *Insurance Companies Act* intrude on a province's authority over property and civil rights in the province.
If however, the federal *Act* properly interpreted, prohibits the Crown in right of the province from incorporating or being a director of, an insurance corporation, and the law is held to be constitutionally valid, then the federal *Act* would be paramount over a provincial attempt to establish such a corporation. This would have the effect of rendering the provincial law inoperative to the extent of the conflict (*Multiple Access Limited* v. *McCutcheon* [1982] 2 S.C.R. 161 at 187).

II. 2 b) To determine the legal requirements for each of the four provincial jurisdictions for the establishment of a common public automobile insurance corporation.

The establishment of a public automobile insurance system will require the enactment of legislation in each province to authorize, develop and administer a plan of universal automobile insurance. A review of provincial legislation will be required to harmonize existing legislation with such a plan.

In structuring a public automobile insurance system in New Brunswick, the applicability of the requirements of the *Official Languages Act*, c. O-0.5 of the Acts of New Brunswick, 2002, as well as the official language obligations in the *Canadian Charter of Rights and Freedoms*, will also have to be considered and acted upon.

Information management will also have to be addressed. Depending upon whether the management of client information is considered part of the responsibility of a province under the ambit of the business of insurance or an inter-provincial matter, provincial or federal legislation will apply. If information management is within provincial jurisdiction, it will attract obligations under the *Right to Information Act*, c. R-10.3 of the Acts of New Brunswick, 1978 and the *Protection of Personal Information Act*, c. P-19.1 of the Acts of New Brunswick, 1998. If it is envisioned as a federal jurisdiction, the *Access to Information Act*, c. A-1, R.S.C.1985, the *Privacy Act*, c. P-21, R.S.C. 1985 and the *Personal Information Protection and Electronic Documents Act*, c. 5, S.C. 2000 will be applicable.

III. 2 c) To examine the legal feasibility of the establishment of (sic) common public automobile insurance corporation by the four Atlantic Provinces.

The legal feasibility of creating a common public automobile insurance corporation is contingent upon its corporate structure and the nature of powers conferred upon it. The *Insurance Companies Act* enacted by the federal

Parliament must be considered, with special consideration given to the prohibitions contained in sections 23 and 168, as well as section 38, of that *Act*. The legislative competence of the federal Parliament to enact such legislation will also have to be examined.

IV. 2 d) To identify any potential legal challenges by the industry to prevent the establishment of a common public automobile insurance corporation (excluding NAFTA, WTO, etc).

The creation of a public automobile insurance corporation will have a major financial impact upon the insurance industry, inviting potential legal challenges flowing from the implementation of a public automobile insurance system. In addition to possible challenges under international instruments and the Agreement on Internal Trade or under the federal/provincial division of powers, the insurance industry may choose to bring legal action against provinces for damages resulting from actual and future loss of profits arising from the termination of vested contractual rights with policy holders. Legislation drafted by provinces to implement a public automobile insurance system should specifically prohibit any right of indemnification by the insurance industry for loss of future profits.

I trust that this information will be of assistance to you.

Yours truly,

Roger Bilodeau, Q.C.
Deputy Minister of Justice &
Deputy Attorney General of New Brunswick

GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR

Department of Justice
Civil Division

September 2, 2003

Mr. Ed Cramm
Secretary to Council
The Council of Atlantic Premiers
5161 George Street, Suite 1006
P. O. Box 2044
Halifax, NS
B3J 2Z1

Dear Sir:

**RE: Terms of Reference:
Atlantic Canada Insurance
Harmonization Task Force**

The following is provided in response to your request of July 28, 2003 for an analysis of the legal implications of establishing a public automobile insurance system for the Atlantic provinces. Draft Terms of Reference respecting the proposed system were prepared by the Atlantic Canada Insurance Harmonization Task Force. An analysis of the cost benefit and legal implications of the terms of reference has been requested. In particular, from a legal perspective, an analysis of section 2 of the terms of reference is required. Comments respecting certain provisions of section 6 of the terms are also provided.

1. Assumptions:

Certain assumptions have been made in the development of the following response. As intimated in section 2 of the terms of reference, it would appear that the four Atlantic provinces are considering the establishment of a common public automobile insurance corporation ("corporation"). It is assumed that the corporation would provide automobile insurance products to consumers and would, as a consequence, replace, either in whole or

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in part, the role of private insurance companies in providing such products. The corporation may assume a limited role with respect to auto insurance, such as providing only the necessary mandatory coverages, including the required minimal third party liability coverage, and leaving optional coverages to the private insurance industry. Alternatively, the corporation could provide both mandatory minimal coverages as well as optional coverages so as to be in full and direct competition with the private insurance industry. Whichever strategy is pursued, it shall be assumed that the business interests of the private auto insurance industry will be damaged by being forced to compete with a lower cost public insurance product.

Based upon the noted minimum assumptions, the following responses to the issues identified under the Legal Implications section are provided from the perspective of Newfoundland and Labrador.

2. Responses Respecting Legal Implications:

(a) *To determine whether the four Atlantic Provinces have the legislative authority to establish a common public automobile insurance corporation or can provide themselves with it.*

At present, Newfoundland and Labrador does not have legislative authority in its pertinent statutes, including the *Automobile Insurance Act*, RSNL 1990, c. A-22 (as amended), the *Insurance Companies Act*, RSNL 1990, c. I-10 (as amended) and the *Highway Traffic Act*, RSNL 1990, c. H-3 (as amended), that would permit a Minister to enter into interjurisdictional agreements to develop, undertake and manage an automobile insurance regime with the remaining Atlantic provinces. Appropriate legislative authority should be obtained for the Government of Newfoundland and Labrador to participate in an agreement by which a common public automobile insurance corporation and a public insurance regime is established. A submission to Cabinet requesting approval to prepare the appropriate statutory amendments would be required.

The creation of the corporation itself should not be problematic. A single corporation could be established in accordance with one jurisdiction's corporate legislation and then be registered as an extra-provincial corporation in the other three provinces. Alternatively, each jurisdiction could register its own corporation that would provide the public automobile insurance products in accordance with the directions of the corporation executive and board of directors. The Atlantic Lottery Corporation may provide a useful precedent upon which an Atlantic province public automobile insurance corporation could be structured.

(b) *To determine the legal requirements for each of the four provincial jurisdictions for the establishment of a common public automobile insurance corporation.*

As noted above, neither the *Automobile Insurance Act*, the *Insurance Companies Act* nor the *Highway Traffic Act* contain statutory provisions which would permit a Minister to enter into agreements with other governments to manage, through a corporate body, a common public automobile insurance regime. As an analogy, the participation by Newfoundland and Labrador in the Atlantic Lottery Corporation was undertaken in accordance with statutory authority which existed pursuant to subsection 3(c) of the *Lotteries Act*, SNL 1991, c. 1-53 (as amended), which states:

> 3. The Minister of Finance may, with the approval of the Lieutenant Governor in Council
>
> . . .
>
> (c) enter into and carry out agreements with the governments of/or more of the provinces or agencies of those provinces for the purpose of incorporating a body corporate to undertake, conduct and manage lottery schemes on behalf of the parties to those agreements.

It is submitted that, at a minimum, a similar form of statutory authority to that of the *Lotteries Act* should be included in the Province's *Automobile Insurance Act* to provide the appropriate statutory authority for Newfoundland and Labrador to enter into an interjurisdictional agreement respecting the conduct and management of a public automobile insurance regime through a common corporate entity.

In addition to the minimum statutory authority to enter into the contemplated interjurisdictional agreement, there exists a larger and more pervasive concern. The planned strategy of a public insurance regime would represent a fundamental shift from the present system, which is based upon insurance products being made available through the private insurance industry, to a system of public automobile insurance provided through an intergovernmental insurance corporation. The implications of such a shift in focus are now considered.

(c) *To examine the legal feasibility of the establishment of a common public automobile insurance corporation by the four Atlantic Provinces.*

In Newfoundland and Labrador, the requirement for automobile insurance is mandated by section 75 of the *Highway Traffic Act*, which states at subsection 1:

> 75.(1) A person shall not operate, or, being the owner, allow another person to operate, a motor vehicle on a highway unless there is in force in respect of the motor vehicle a policy of insurance.

The regime by which automobile insurance is provided or renewed in the Province is governed by the *Automobile Insurance Act* ("Act"). The Act is predicated upon the premise that automobile insurance products shall be provided through the private insurance industry, in particular through the insurance agents and insurance companies involved in the industry. To move from a private industry focus to a public form of automobile insurance regime would be a fundamental legislative and philosophical shift for Newfoundland and Labrador. Substantial amendments to, if not possible repeal of, the *Automobile Insurance Act* would be required to accommodate a public automobile insurance system. These amendments would require consultation among certain government departments, notably the Departments of Government Services and Lands, which has responsibility for the Province's Motor Registration Division, Justice and possibly Finance. Consultation with interest groups outside of government, notably the insurance industry and legal community, may as well be deemed advisable.

Therefore, regarding the question of legal feasibility of the establishment of a common public automobile insurance corporation, if such a policy direction is provided Newfoundland and Labrador could institute legislative measures to support such a regime. However, it is further suggested that substantial statutory amendments would be required to permit the Province to enter into the necessary interjurisdictional agreement and to shift the focus of the Province away from an insurance regime based upon private industry services to a public insurance system in which private insurers may have limited involvement.

(d) *To identify any potential legal challenges by the industry to prevent the establishment of a common public automobile insurance corporation.*

The consequences of a shift to a public insurance system may well be damaging to the business interests and profitability of private insurance companies. Private insurers may attempt to bring action seeking an equitable remedy for loss of anticipated revenues or profits should a private regime be instituted. However, it is submitted that the private insurers may have difficulty in substantiating the grounds for such a complaint.

Pursuant to its constitutional authority under section 92 of the *Constitution Act, 1867*, the provinces have the exclusive jurisdiction to make laws with respect to the management and regulations of matters dealing with property and civil rights in a province. Further, the provinces have exclusive jurisdiction respecting the incorporation of companies with provincial objects. Based upon these grounds of constitutional jurisdiction, the Atlantic provinces should be operating within their permitted constitutional competencies if they decide to move to a system of public automobile insurance and create a corporation to manage such a system. It is submitted that the insurance industry would have difficulty in challenging the establishment of a public insurance regime and the establishment of a common public automobile insurance corporation on constitutional grounds.

Further, it is difficult to envision how insurers could substantiate an action based upon other grounds, such as tort. There would appear to be limited grounds to suggest that fault or negligence would apply if governments acted within their constitutional capacities to provide a useful public service, which would undermine a finding of tort liability. If a government had entered into a contract with a private company respecting an automobile insurance service, there may be grounds to claim breach of contract should a public insurance regime jeopardize the contractual rights and benefits of such an agreement. However, in the absence of any grounds for contractual liability, the insurance industry may have difficulty in establishing a legal cause of action based upon constitutional or tortious grounds.

(e) *To consider whether an interprovincial government insurance plan be subject to federal regulation.*

As stated in the response to the prior question, the regulation and management of insurance in a province and the creation of a corporation to undertake such a role should be within provincial constitutional competencies given provincial authority over property and civil rights in a province and over the incorporation of companies with provincial objects. However, there may be grounds to question whether a common Atlantic provinces insurance regime would not also be subject to federal constitutional jurisdiction.

Section 92(10) of the *Constitutional Act, 1867* exempts from provincial constitutional authority those local works and undertakings which extend beyond the limits of a province or works which are for the advantage of two or more of the provinces. An interprovincial government insurance plan which provides insurance products throughout the Atlantic provinces and results in benefits to the governments and consumers of the four provinces may be viewed as works or undertakings which are for the advantage of the four Atlantic provinces and are therefore beyond the exclusive constitutional jurisdictions of the provinces in accordance with subsection 92(10).

Much of the concern regarding the intrusion of a common automobile insurance plan into federal jurisdiction may be alleviated by the method by which such a plan is implemented. If each province established its own public automobile insurance corporation to manage a public automobile insurance regime within the province, and each province created its own corporation in accordance with the common guidelines established by a joint interprovincial administrative committee, it is suggested that a concern over federal intrusion may be lessened. Such a regime may be less cost-efficient than a single interprovincial corporation, but the potential for a finding of federal intrusion may be reduced.

3. Other Issues:

Respecting the remaining issues identified in item 6 of the draft Terms of Reference, it could be expected that both the automobile insurance industry and the legal communities in the respective Atlantic provinces may be impacted by the introduction of a public automobile insurance system. Public insurance products offered to consumers at a lower cost for insurance premiums would reduce the market share of private insurers and lessen profitability. If the effect of a public insurance regime is also to result in a lowering or elimination of certain damage awards so as to maintain lower premium levels, members of the legal community, many of whom rely upon the percentage of damage claims for revenue, will be adversely impacted.

It is understood that the form of a public automobile insurance regime and the establishment of such a regime is still under consideration. This may provide an opportunity to use the time to consult with the private insurance industry and the legal community to guage their reactions, and possible objections, to a public regime so as to attempt to accommodate, to the extent possible, the positions of these groups respecting a public automobile insurance regime.

It is hoped that the above may be of assistance in the consideration of the establishment of a common public automobile insurance regime for the Atlantic provinces. I am available to discuss the matter further at your convenience.

Yours very truly,

Paul Nolan

Paul Nolan
Solicitor

PN/cj
cc: John Cummings, Q.C.
Deputy Minister and Deputy Attorney General
Department of Justice

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September 2, 2003

Mr. Ed Cramm, Secretary to Council
The Council of Atlantic Premiers
5161 George Street, Suite 1006
PO Box 2044
Halifax, NS B3J 2Z1

Dear Mr. Cramm:

Re: Your Request of July 28, 2003

As requested we have referred Section 2 of the terms of reference to our legal department. Please note that as the request had a short time frame attached to it from our perspective, we have only had the opportunity to do preliminary research. However, we can offer comments on each of the questions presented. For your ease of reference, we have set out the questions and our comments directly follow each question respectively.

2(a) To determine whether the four Atlantic Provinces have the legislative authority to establish a common public automobile insurance corporation or can provide themselves with it;

It would appear that the Province of Prince Edward Island does have the legislative authority to establish a public automobile insurance corporation. We believe that, to the extent that the Government of Prince Edward Island is only making its participation in a common public automobile insurance corporation applicable to the persons of Prince Edward Island, and making any laws pursuant to its authority to make law in relation to Property and Civil Rights in Prince Edward Island, the legislative authority of the province would allow for its participation in such a project.

2(b) To determine the legal requirements for each of the four provincial jurisdictions for the establishment of a common public automobile insurance corporation;

2(c) To examine the legal feasibility of the establishment of common public automobile insurance corporation by the four Atlantic Provinces;

We believe that one of the main factors that needs to be considered in the establishment of any type of a common venture between provinces is the need for each of the provinces to ensure that they are maintaining the independence of their legislative ability, such that each legislature must make sure that it is passing laws that affect the residents of its province, realizing that the passing of a law in another province or for the provincial concerns of another province would not have validity outside of that province.

The introduction of such a system would require substantial amendments to our existing legislation. Also, the common aspect of the insurance corporation would probably require other detailed work before the insurance part of the proposal could be addressed. In the past the Maritime Provinces have, through the Council of Maritime Premiers, pursued certain joint actions and undertakings. In Prince Edward Island legislation, both the Maritime Provinces Higher Education Commission and the Maritime Provinces Harness Racing Commission are bodies which are established by the Council of Maritime Premiers. It is our understanding that each province has parallel legislation that puts these commissions into place and allows them to work in each of these specific provinces. Accordingly, although it appears to be difficult to have the three provincial legislatures acting in concert towards legislative amendments that need to be made for the common entity, it has been achieved in the past.

Looking at a project on as large a scale as an insurance corporation common to all four Atlantic provinces, it would seem that such a project would require a large amount of coordination and similar policies for the provinces involved. As you know, insurance legislation is very detailed and it would seem that significant resources would be needed to accomplish the legal task associated with preparing, reviewing and finalizing the required legislative documents.

2(d) To identify any potential legal challenges by the industry to prevent the establishment of a common public automobile insurance corporation (excluding NAFTA, WTO, etc.).

It would appear that one of the major legal challenges that might be tried by an entity to prevent the establishment of a common public insurance corporation is one that has been tried unsuccessfully in relation to a single public insurance scheme in British Columbia. In the case *Canadian Indemnity Co.* v. *British Columbia Attorney General,* [1977], 2 S.C.R. 504, various insurance companies carrying on the business of insurance in Canada challenged the British Columbia legislation stating that the legislation related to a matter exclusively within the

.../3

jurisdiction of the Federal Parliament by virtue of section 91(2) of the Constitution (the regulation of trade and commerce) and that the effect of the legislation was in relation to and directed at the status, and capacity of federally incorporated companies and was, therefore, *ultra vires* the legislature of British Columbia.

While we will not comment on the second issue challenged by the insurance companies, it would appear that the interprovincial nature of a common scheme might attract the attention of the insurance companies or the Federal Government such that they might challenge the various provinces' abilities to enact an interprovincial insurance scheme. While it was ruled that the aim of the legislation in the British Columbia case related to the matter of provincial concern within the province and to Property and Civil Rights within that province, insurance companies might potentially argue that the thrust of a four-province scheme might be to regulate the trade or commerce of insurance rather then to simply provide compulsory insurance of motor vehicles in the various provinces. The aim of any legislation creating a public automobile insurance corporation must be a matter of truly provincial concern within the province and we would suggest, to Property and Civil Rights within the province. Considering the intricacies and specifics of the insurance industry, this might be a difficult task in relation to a common insurance plan.

2(e) To consider whether an interprovincial government insurance plan be subject to federal regulation.

Insurance is not specifically mentioned in the *Constitution Act*, 1867 and historically, the insurance industry has been one area of law which both the provincial and federal levels of government have tried to regulate. Despite court decisions which refused to recognize the federal power to regulate insurance in relation to its authority of trade and commerce and under the auspice of criminal law, the federal government does regulate part of the insurance industry (under statutes covering British and foreign companies, federally incorporated companies and, on a voluntary basis, provincially incorporated companies). However, it appears that the main recognition in the case law, as to what level of government is to regulate the insurance industry, rests with the province in relation to Property and Civil Rights.

Therefore, at this time, it would not appear that an interprovincial insurance plan would be subject to federal regulation. However, should the Federal government see a common public automobile insurance plan as affecting one of its enumerated heads of power under the Constitution (ie: trade and commerce as noted in subsection 2(d) above), it is difficult to predict what the Federal government might consider as its role in relation to the insurance industry.

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Please note that we have not provided any comments on Section 6 "Other", due to our understanding that the Task Force has agreed that Shelley Miller would be in the best position to determine the implications based on what ever options she recommends.

We hope that the above comments are of some use to you. Should you have any questions or concerns or require more information please contact me at your convenience.

Yours truly,

Patsy G. MacLean

Patsy G. MacLean
Deputy Attorney General

ATLANTIC CANADA INSURANCE
HARMONIZATION TASK FORCE

MODEL
INSURANCE ACT

TAB 6

SEPTEMBER 30TH, 2003

Justice
Insurance Branch

Justice
Direction des assurances

New
Nouveau Brunswick

September 22, 2003

Mr. Fred Morash, Chair
Atlantic Insurance Harmonization Task Force
c/o Mr. Ed Cramm, Secretary
Council of Atlantic Premiers
P.O. Box 2044,
Halifax, Nova Scotia
B3J 2Z1

Dear Mr. Morash:

RE: Transmittal of Harmonized Model Insurance Act for Atlantic Canada

I am pleased to be writing on behalf of the provincial Superintendents of Insurance in Atlantic Canada to formally transmit the attached "Model Act" to the Atlantic Premiers through the Atlantic Insurance Harmonization Task Force.

The Atlantic Superintendents, along with many others from industry, the legal community and consumer groups, have devoted considerable effort to developing this Model Act over a number of years, under the mandate of the Council of Atlantic Premiers. We believe the result will be a landmark in Canada. The transformation into legislation of this detailed policy document, and the regulatory proposals that will follow, will place Atlantic Canada in the forefront of insurance regulatory harmonization. We are also pleased to report that in pursuing the objective of legislative harmonization, we have also up-dated the Act to reflect the current environment, and enhanced consumer protection measures.

The Superintendents wish to bring to your attention to a few outstanding issues that will be addressed in the near future, either during the drafting process or through future amendments to the new legislation. They are:

- Powers of Attorney – A proposal by the Canadian Life and Health Insurance Association respecting insurers responsibilities in relation to life policies where a Power of Attorney document exists requires further research.

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- Third Party Warranties – These "insurance" arrangements are inadequately addressed by current legislation, but models from other jurisdictions raise concerns about additional administrative responsibilities. This will be discussed further, following completion of a British Columbia review of the issue.

- Classes of insurance - The Canadian Council of Insurance Regulators endorsed classes of insurance and accompanying definitions in 2002. Subsequent questions, however, resulted in further work, which now is close to completion. The introduction of new, harmonized classes and their impact on the act as a whole will need to be addressed during the drafting phase.

- Fire Part of the Act – Recent Supreme Court of Canada decisions have effectively eliminated the application to multi-peril policies of the provisions that have been included in the Model Act. The Canadian Council of Insurance Regulators is working with industry on the development of amendments to address this problem. This process may also affect the Insurance Contracts part of the Model Act.

As you are aware, efforts to harmonize Part 9 of the Model Act respecting Automobile Insurance have been hampered by reviews of the automobile insurance system, beginning with the 1998 report of the Select Committee to Review the Property and Casualty Insurance Industry in Newfoundland, and more recently by various provincial legislative amendments. However, the Part 9 that appeared in earlier drafts of the Model Act has been retained in the final draft as a reference point, and for the convenience of the legislative drafters.

A decision was made in developing the Model Act to put into regulations those elements of the current statute that by their nature would benefit from that more flexible process. As a result, a considerable amount of work remains to be done to develop the required regulations and undertake the consultation that will accompany that process. In view of this remaining work and the challenges of a coordinated legislative drafting process, the Superintendents are recommending that a project manager be assigned to oversee the Insurance Legislation Harmonization Project as it moves to the next stages. This individual should have access to specialized consultants, as required. This would contribute significantly to the expeditious completion of the project and ensure that critical linkages amongst jurisdictions are maintained throughout the drafting stage.

...3

Finally, on behalf of my colleagues, I would like to thank the Council of Atlantic Premiers for their vision in embarking on the Insurance Legislation Harmonization Project and for their on-going support of this very important regional initiative.

Yours truly,

Janet H. Cameron

Janet H. Cameron
Superintendent of Insurance
Department of Justice
New Brunswick

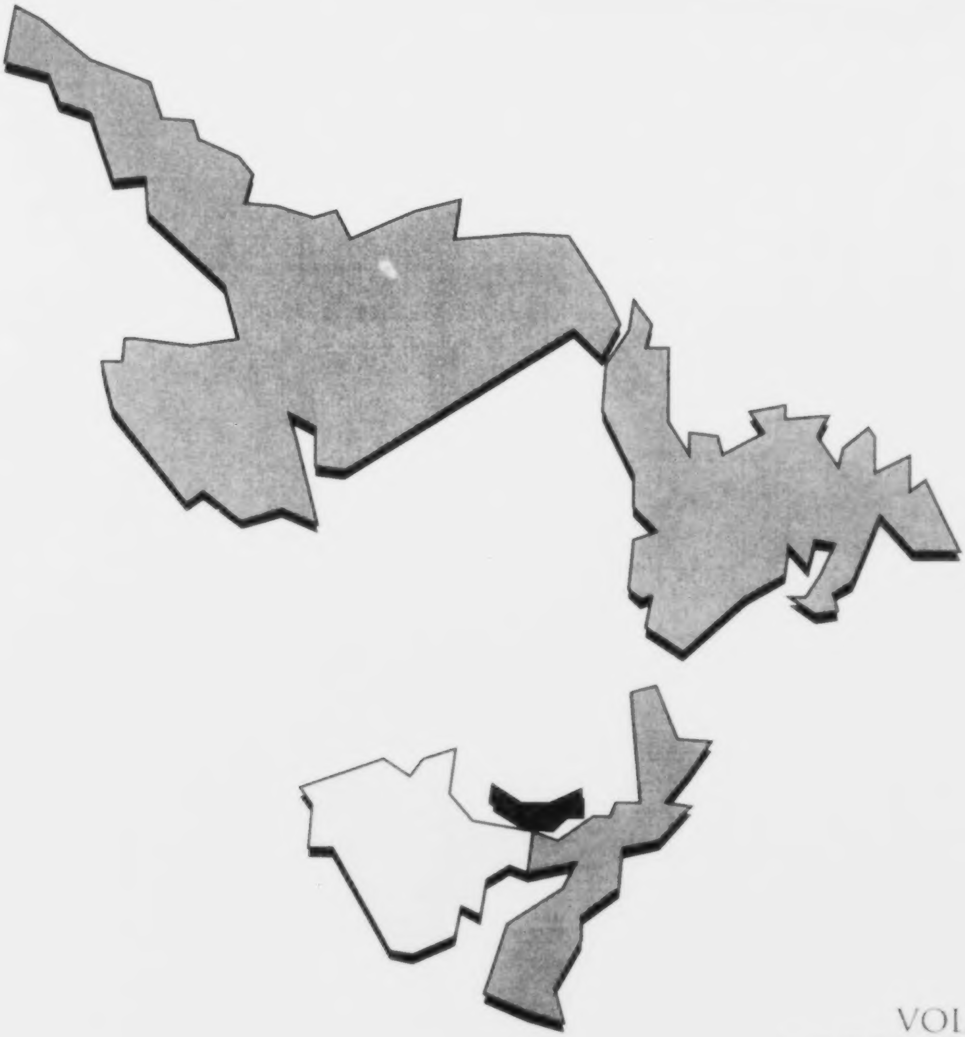
cc. Winston Morris, Superintendent of Insurance
Department of Government Services and Land
Newfoundland and Labrador

Catherine Smith, Superintendent of Financial Services
Department of Environment and Labour
Nova Scotia

Robert Bradley, Superintendent of Insurance
Office of the Attorney General
Prince Edward Island

Attachment: Harmonized Model Act - Final Draft - September 4, 2003

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE



VOLUME 3:
MODEL INSURANCE ACT

REPORT TO THE ATLANTIC PREMIERS

SEPTEMBER 30TH, 2003

Justice
Insurance Branch

Justice
Direction des assurances

New
Nouveau **Brunswick**

September 22, 2003

Mr. Fred Morash, Chair
Atlantic Insurance Harmonization Task Force
c/o Mr. Ed Cramm, Secretary
Council of Atlantic Premiers
P.O. Box 2044,
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Yours truly,

Janet H. Cameron

Janet H. Cameron
Superintendent of Insurance
Department of Justice
New Brunswick

cc. Winston Morris, Superintendent of Insurance
Department of Government Services and Land
Newfoundland and Labrador

Catherine Smith, Superintendent of Financial Services
Department of Environment and Labour
Nova Scotia

Robert Bradley, Superintendent of Insurance
Office of the Attorney General
Prince Edward Island

Attachment: Harmonized Model Act - Final Draft - September 4, 2003

ATLANTIC CANADA INSURANCE HARMONIZATION TASK FORCE

MODEL INSURANCE ACT

TAB 6

SEPTEMBER 30TH, 2003

HARMONIZED MODEL INSURANCE ACT

for Atlantic Canada

(FINAL DRAFT - September 4, 2003)

Prepared by: the Atlantic Superintendents of Insurance

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TABLE OF CONTENTS

(Parts, Sub Parts, Divisions)

INTERPRETATION 8

Part 1 - SUPERINTENDENT & ADMINISTRATION 14
- Sub-Part A: ORGANIZATION, POWERS AND DUTIES 14
  - ORGANIZATION 14
  - LICENCES 16
  - DECISIONS, HEARINGS AND APPEALS 16
  - ADMINISTRATION 18
  - SERVICE OF PROCESS 21
  - ANNUAL REPORT 22
- Sub-Part B: EXAMINATION AND ENFORCEMENT 22

Part 2 - GENERAL PROVISIONS APPLICABLE TO INSURERS 28
- Sub-Part A: GENERAL 28
  - LICENCES 29
  - DEPOSITS 38
- Sub-Part B: RECORDS and REPORTING 40
  - RETURNS 40
- Sub-Part C: ASSESSMENTS and FEES 43
- Sub-Part D: REGULATIONS and FORMS 44
- Sub-Part E: OFFICIAL LANGUAGES 47

Part 3 - PROVINCIAL INSURANCE CORPORATIONS 48
- Sub-Part A: GENERAL 48
  - FORFEITURE FOR NON-USE OR DISCONTINUANCE 48
  - WINDING-UP 48
  - AMALGAMATION AND TRANSFER 50
- Sub-Part B: STOCK INSURANCE CORPORATIONS 52
  - INTERPRETATION, APPLICATION AND TRANSITION 52
  - STATUS AND POWERS 55
  - INCORPORATION, FUNDAMENTAL CHANGES AND DISSOLUTION 58
    - Division 1-Incorporation 59

Division 2-Organization and Commencement After Incorporation 60
Division 3-Continuance Into the Province 63
Division 4-Continuance Out of the Province 65
Division 5-Mutualization 66
Division 6-Demutualization 67
Division 7-Change of Name, Financial Year and Terms and Conditions 68
Division 8-Amalgamation 68
Division 9-Transfer of Business and Fundamental Reinsurance 71
Division 10-Dissolution and Revival 73
Simple Dissolution 74
Court Supervised Liquidation 76
General 83
Revival 84
Division 11-General 85
HEAD OFFICE, RECORDS AND FINANCIAL STATEMENTS 86
CAPITAL STRUCTURE 92
REQUIREMENTS FOR SHARES 92
CHANGES TO SHARES 95
OTHER MATTERS 98
PARTICIPATING POLICYHOLDERS AND SHAREHOLDERS 110
Division 1: Meetings and Voting 110
Participating Policies and Dividends 123
Division 2: Proxies and Proxy Solicitation 125
DIRECTORS AND OFFICERS 130
Duties 130
Qualifications and Number of Directors 131
Election and Tenure of Directors 134
Incomplete Elections and Director Vacancies 137
Meetings of the Board 141
By-laws 143
Committees of the Board 133
Authority of Directors and Officers 146
Conflicts of Interest 147
Liability and Indemnification 149
Liability for Wages 151
INSIDER TRADING 153
AUDITORS 154
ACTUARIES 161
Sub-Part C: ADEQUACY OF CAPITAL AND LIQUIDITY 166

Sub-Part D: INVESTMENTS 166
PORTFOLIO LIMITS 172
Sub-Part E: RELATED PARTY TRANSACTIONS 175
TRANSACTIONS WITH RELATED PARTIES 175
Sub-Part F: PROVINCIAL MUTUAL INSURANCE CORPORATIONS 184
GENERAL 184
CONTRACTS 184
RATES OF INSURANCE 186
LOSSES UNDER CONTRACTS 186
RESERVE AND GUARANTEE FUND 186
MUTUAL INSURANCE GUARANTEE FUND 186
Sub-Part G: REGULATIONS 188

Part 4 - RECIPROCAL and INTER- INSURANCE EXCHANGES 190

Part 5 - SOCIETIES 195
LICENCING 195
CONSTITUTION AND RULES 196
MEMBER'S RIGHTS AND LIABILITIES 198
REPORTS AND READJUSTMENT OF CONTRACTS 200
SPECIAL RATES AND BENEFITS 203

Part 6 - COMPENSATION ASSOCIATIONS 206

Part 7 - MARKET CONDUCT and CONSUMER PROTECTION 208
Sub-Part A: INSURANCE CONTRACTS 208
POLICY OF INSURANCE 208
LOSS UNDER POLICY 210
NOTICES 213
INSURANCE AS COLLATERAL SECURITY 214
Sub-Part B: MARKET CONDUCT COMPLAINT HANDLING and DISCLOSURE 215
POINT OF SALE DISCLOSURE TO LIFE INSURANCE APPLICANT 215
INFORMATION FOR AUTOMOBILE INSURANCE APPLICANTS 216
OFFENCE 217
REGULATIONS 217
Sub-Part C: INTERMEDIARIES 217
Division 1: AGENTS, BROKERS and ADJUSTERS 217
Licences of Agents and Brokers 217
Licences of Insurance Adjusters 221

Licences to Partnerships 221
Licences to Corporations 222
Sponsor Required 222
Designated Representative 223
Designated Representative Responsibilities 223
Requirement to Carry Insurance 224
General 224
Insurance Premium Financing Agreements 225
Special Broker's Licences For Business With Unlicenced Insurers 228
Division 2: COUNCILS 229

Sub-Part D: UNFAIR, DECEPTIVE and PROHIBITED ACTS and PRACTICES 233
Acts and Practices 233
Offence 237

Sub-Part E: REGULATIONS 237

Part 8 - GENERAL INSURANCE 239
Sub-Part A: FIRE INSURANCE 239
Schedule: Statutory Conditions 244
Sub-Part B: LIVESTOCK INSURANCE 247
Sub-Part C: WEATHER INSURANCE 248
Sub-Part D: MARINE INSURANCE 249

Part 9 - AUTOMOBILE INSURANCE 250
Sub-Part A: AUTOMOBILE INSURANCE CONTRACTS 250
INTERPRETATION 250
APPROVAL OF APPLICATION AND POLICY FORMS 251
APPLICATION AND POLICY 253
MOTOR VEHICLE LIABILITY POLICIES 255
LIABILITY COVERAGE POLICY LIMITS 258
ACCIDENT BENEFITS 264
OTHER INSURANCE 268
PHYSICAL DAMAGE COVER 269
UNIDENTIFIED AND UNINSURED ACCIDENT COVERAGE 269
SUBROGATION 283

Sub-Part B: FACILITY ASSOCIATION 284
FACILITY ASSOCIATION 284

Sub-Part C: GENERAL 289
PROVINCIAL MEDICAL CARE LEVY 289
DAMAGES 293
Sub-Part D: RATES and CLASSIFICATIONS 296
RATE and CLASSIFICATION BOARD 296
REGULATIONS 300
Schedule to Part 9 :STATUTORY CONDITIONS 301

Part 10 - LIFE INSURANCE 308
Sub Part A: GENERAL 308
DEFINITIONS 308
APPLICATION OF PART 310
POLICY ISSUANCE AND CONTENTS 311
CONDITIONS GOVERNING FORMATION OF CONTRACT 314
BENEFICIARIES 319
DEALINGS WITH CONTRACT DURING LIFETIME OF INSURED 323
MINORS 326
PROCEEDINGS UNDER CONTRACT 326
Sub-Part B: VARIABLE AND PARTICIPATING CONTRACTS 333
VARIABLE CONTRACTS 333
PARTICIPATING CONTRACTS 337
Sub Part C: MISCELLANEOUS PROVISIONS 338
REGULATIONS 338

Part 11 - ACCIDENT and SICKNESS INSURANCE 339
INTERPRETATION AND APPLICATION 339
CONTINUATION OF COVERAGE WHERE CONTRACT TERMINATED 343
POLICY ISSUANCE AND CONTENTS 346
CONDITIONS GOVERNING FORMATION OF CONTRACT 350
POLICIES ON LIVES OF MINORS 351
MISREPRESENTATIONS AND NON-DISCLOSURE 351
BENEFICIARIES 353
REGULATIONS 361

Part 12 - TRANSITIONAL PROVISIONS 361

Discussion Draft

Harmonized Model Insurance Act

INTERPRETATION

Definitions

1 In this Act, except where inconsistent with the definition sections of any Part,

"actuary" means a Fellow of the Canadian Institute of Actuaries;

"adjuster" means a person who,
- (a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
- (b) holds himself, herself or itself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include,
- (c) a barrister or solicitor acting in the usual course of the practice of law,
- (d) a trustee or agent of the property insured,
- (e) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or
- (f) a person who acts as an adjuster of marine losses only;

"affiliate" means
- (a) an entity is affiliated with another entity if one of them is controlled by the other or both them are controlled by the same person, and
- (b) the affiliates of an entity are deemed to be affiliated with all other entities with which the entity is affiliated.

"agent" or "insurance agent" means a person who solicits or offers insurance products directly to the public or to other market intermediaries in insurance business on behalf of one insurer, or a person who is bound to one insurer by exclusive contract

"automobile" includes a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, water craft or aircraft;

"auditor" means a person who is licensed under the [*Public Accountancy Act*]

"broker" or "insurance broker" means a person who solicits or offers the insurance products of two or more insurers, licensed to carry on the same class of insurance, directly to the public or to other market intermediaries in insurance business, and is not bound by exclusive contract to any such insurers.

"cash-mutual corporation" means a corporation without share capital that is empowered to undertake insurance on both the cash plan and the mutual plan;

"chief agency" means the principal office or place of business in the province of any licensed insurer having its head office out of the province;

"chief agent" means the individual in the Province with the authority and as appointed by an insurer as stipulated by this Act.

"class" in respect of insurance, an insurance contract or license, means a class as defined in the Regulations;

"contract" means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

"court" means
(a) in the Province of New Brunswick the Court of Queen's Bench for the Province,
(b) in the Provinces of Newfoundland and Prince Edward Island, the Trial Division of the Supreme Court of the Province, and
(c) in the Province of Nova Scotia, the Supreme Court of the Province,
or a judge thereof.

"due application" includes such information, evidence and material as the Superintendent requires to be furnished, and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act;

"entity" includes a body corporate, trust, partnership, fund, an unincorporated association or organization, the Crown in right of Canada or of a province, an agency of the Crown in either of such rights and the government of a foreign country or any political subdivision thereof and any agency thereof;

"exchange" or "reciprocal or inter-insurance exchange" means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney;

"foreign jurisdiction" means a jurisdiction other than the "Province";

"franchise insurance" means group insurance of a particular type whereby the contract provides that the insured members of the group, collectively and individually, have a vested right and privilege to pay any premium, in whole or in part or both and whether directly or indirectly, to the insurer.

"fraternal society" means a society, order or association incorporated for the purpose of making with its members only, and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act;

"group insurance" means insurance of any class or type whereby a number of persons are insured severally under a single contract between an insurer and a third party

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance;

"insurance fund" or "insurance funds", as applied to a fraternal society or as applied to a corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;

"insurance money" means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses, and annuities payable under the contract;

"insurance on the cash plan" means any insurance that is not mutual insurance;

"insurer" includes any person, corporation or any society or association incorporated or unincorporated, any fraternal society or any person or partnership, or any underwriter or group of underwriters, that undertakes, agrees or offers to undertake or effect a contract of insurance.

"lodge" includes a primary subordinate division, by whatever name known, of a fraternal society;

"Minister" means the member of the Executive Council charged for the time being with the administration of this Act;

"motor vehicle liability policy" means a policy or part of a policy evidencing a contract insuring,

(a) the owner or driver of an automobile, or

(b) a person who is not the owner or driver thereof where the automobile is being used or operated by that person's employee or agent or any other person on that person's behalf, against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

"**mutual insurance corporation**" means a corporation without share capital that is empowered to undertake mutual insurance exclusively;

"mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts, whether or not the maximum amount of such consideration is predetermined;

"non-owner's policy" means a motor vehicle liability policy insuring a person solely in respect of the use or operation by that person or on that person's behalf of an automobile that is not owned by that person;

"officer" includes a trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer and any other person so appointed by the insurer;

"owner's policy" means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by that person and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;

"paid in", when applied to the capital stock of an insurer or to any shares thereof, means the amount paid to the insurer on its shares, not including the premium, if any, paid thereon, whether such shares are or are not fully paid;

"paid up", when applied to the capital stock of an insurer or to any shares thereof, means the capital stock or shares on which there remains no liability, actual or contingent, to the issuing insurer;

"person" includes an individual, corporation, incorporated and unincorporated association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate;

"policy" means any instrument, writing or document evidencing a contract of insurance or reinsurance, whether contained in one or more instruments, writings or documents;

"premium" means the single or periodical payment under a contract for insurance, and includes dues, assessments and other considerations;

"property" includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract;

“Province” means the jurisdiction of enactment of this Act;

“provincial mutual corporation” means a mutual insurance corporation incorporated by or under an Act of the Province;

“provincial company” means an insurance corporation incorporated by or under an Act of the Province;

"rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends;

“Rate Board” means the premium rate and classification board designated and appointed by the Lieutenant Governor in Council under this Act;

"risk classification system", in relation to automobile insurance, means the elements used for the purpose of classifying risks in the determination of rates for a coverage or category of automobile insurance, including the variables, criteria, rules and procedures used for that purpose;

“spouse”[1] means either of a man or a woman who are married to each other or a common-law partner

"Superintendent" means the Superintendent of Insurance appointed under this Act or another Act and such other person who by this Act is authorized, appointed or designated to perform the duties of the Superintendent;

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[1] The definition of spouse will require review for appropriateness in each provincial legislative regime

"upon proof", as applied to any matter connected with the licensing of an insurer or other person, means upon proof to the satisfaction of the Superintendent;

Part 1 - SUPERINTENDENT AND ADMINISTRATION

Sub-Part A: ORGANIZATION, POWERS AND DUTIES

ORGANIZATION

Superintendent of Insurance[2]
1.1(1) The Lieutenant-Governor in Council shall appoint a Superintendent of Insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every Act that assigns duties to or confers powers on the Superintendent.

Duties
1.1(2) The Superintendent shall administer and enforce this Act and supervise generally, and inform and make recommendations to the Minister in respect of the business of insurance in the Province and, in so doing may issue such rulings, instructions, guidelines, or orders as the Superintendent deems necessary.

Deputy Superintendent
1.1(3) The Minister may appoint Deputy Superintendents of Insurance who shall perform the duties that are assigned to them by the Minister and the Superintendent.

Acting Superintendent
1.1(4) If the Superintendent is unable to act because of illness, absence or any other reason, such person as may be designated by the Minister shall act as and have all of the powers of the Superintendent.

Delegation
1.1(5) The Superintendent may delegate in writing any of his or her powers or duties to an employee of the Superintendent's Office, subject to any limitation or condition set out in the delegation.

No liability
1.2(1)[3] No action lies against her majesty, the Minister, the Superintendent, any Deputy Superintendent, any officer or employee of the Office of the Superintendent or any

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[2] Power to appoint may be subject to local variation

[3] Note to Legislative drafters: The intent of sections 1.2(1-5) is to protect individuals providing information to the superintendent and to keep information they disclose confidential from disclosure by civil proceedings and/or provincial Freedom of Information Acts and is not meant to protect the superintendent in actions regarding denial of licenses. It is not intended for this provision to impair an applicant's rights where the Superintendent has refused a licence. Reference s7.29(2) and (3)

person acting under the direction of the Superintendent, for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties that under any Act of the Province are intended or authorized to be executed or performed.

Crown liability
1.2(2) Despite any other Act, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Testimony in civil proceedings
1.2(3) Except with the consent of the Superintendent, no person mentioned in subsection (1), other than the Superintendent, shall be required to testify in any civil proceeding, in a proceeding before the Superintendent or in any proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any other Act relating to insurance.

Idem
1.2(4) Except with the consent of the Minister, the Superintendent shall not be required to testify in any civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any other Act relating to insurance.

Privilege
1.2(5) Any information, document, record, statement or thing made or disclosed to the Superintendent concerning any person licensed or applying for licence under this Act or any other Act related to insurance is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person.

Interests in insurer or intermediary
1.3 Neither the Superintendent nor any officer or person under the Superintendent shall have an interest, directly or indirectly, other than as a policyholder, in any insurance company or intermediary doing insurance business in the Province, without the approval of the Minister, as the case may be

Agreements with other jurisdictions
1.4 Subject to the approval of the Minister, the Superintendent may enter into an agreement with any other government, regulatory authority, compensation association, law enforcement agency, investigative body, insurance council or person inside or outside Canada:

(a) for the purpose of administering or enforcing this Act or any Act or law of the other jurisdiction that is similar to this Act, including an agreement authorizing the Superintendent to perform responsibilities and exercise powers on behalf of the other government, regulatory authority, compensation association, law enforcement agency, investigative body, insurance council or person and authorizing the other government, regulatory authority, compensation association, law enforcement agency, investigative body, insurance council or person to perform responsibilities and exercise powers on behalf of the Superintendent;

or

(b) for any other purpose that the Superintendent believes is in the public interest.

Actions and proceedings

1.5 The Superintendent may bring actions and institute proceedings in his or her name of office for the enforcement of any of the provisions of this Act or for the recovery of fees and penalties payable hereunder.

LICENCES

Entitlement to a licence

1.6(1) The Superintendent shall determine the entitlement, if any, of any person to be licensed under this Act including any terms and conditions which may be deemed appropriate, but nothing in this section affects the right of the Superintendent to deny, suspend, cancel or refuse to reinstate any licence in the exercise of his or her authority under this Act.

Decision of Superintendent

1.6(2) Every decision of the Superintendent upon an application for a licence shall be in writing and a copy of the decision shall be given to the applicant.

Certified copy

1.6(3) The insurer, or any person interested is entitled upon payment of the prescribed fee, to a certified copy of the decision.

Appeal[4]

1.6(4) An applicant for a licence may appeal the decision of the Superintendent refusing a licence, placing a condition on or revoking a licence.

DECISIONS, HEARINGS AND APPEALS

Orders

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[4] An appeal process is envisioned but the process may be subject to local variation through regulations (courts, appeal boards). The Act is intended to be permissive of appeal boards, otherwise appeals are directed to courts.

1.7(1) The Superintendent, in a proceeding or otherwise, shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim orders
1.7(2) The Superintendent may make interim orders pending a final order in a matter before him or her.

Proceedings before the Superintendent
1.8(1) In the event that the Superintendent, in his or her discretion, holds a proceeding, in any proceeding before the Superintendent, the Superintendent may,
(a) make rules for the practice and procedure to be observed;
(b) determine what constitutes adequate public notice, if any;
(c) before or during the proceeding, conduct any inquiry or inspection the Superintendent considers necessary;
(d) in determining any matter, consider any relevant information obtained by the Superintendent in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the additional information and gives them an opportunity to explain or refute it.

Costs
1.8(2) The costs and expenses of and incidental to a proceeding before the Superintendent are in his or her discretion and may be fixed in any case at a sum certain or may be assessed and are not limited to the considerations that govern the award of costs in any court.

Idem
1.8(3) The Superintendent may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed.

Idem
1.8(4) Costs awarded under this section may include the costs of the Superintendent's office, regard being had to the time and expenses incurred.

Variation of decisions
1.9(1) The Superintendent may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so.

No hearing
1.9(2) The Superintendent is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions.

Exclusive jurisdiction

1.10(1) This section applies with respect to proceedings under this Act before the Superintendent.

Idem

1.10(2) The Superintendent has exclusive jurisdiction to exercise the powers conferred upon him or her
under this Act and to determine all questions of fact or law that arise in any proceeding before him or her

Decisions, etc., not stayed

1.10(3) An application for judicial review and any appeal from an order of the Superintendent or court on the application does not stay the decision made under this Act.

Court may grant stay

1.10(4) Despite subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Power to summon witnesses, etc.

1.11(1) For the purpose of exercising the powers and performing his or her duties under this or any other Act, the Superintendent has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Court.

Power to require evidence

1.11(2) The Superintendent may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Oaths

1.11(3) The Superintendent may administer and certify an oath required under this Act.

ADMINISTRATION

Records of Superintendent

1.12(1) The Superintendent shall keep such books and records as prescribed by this Act and any other Act related to insurance, and the Regulations thereto, in such form as the Superintendent deems appropriate.

Inspection

1.12(2) The books and records required to be kept under subsection (1) shall be open to inspection at such time and upon payment of such fees as are prescribed.

Certificates

1.12(3) The Superintendent may issue a certificate,

(a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or canceled, or licence conditions were imposed or undertakings were entered into, on a stated day;

(b) stating that a copy of, or extract from, a document, report or thing in the custody of the Superintendent is a true copy of, or extract from, the original;

(c) stating the amount payable on account of an assessment, examination, audit, fine or otherwise;

(d) stating whether any document required under this Act was filed;

(e) stating whether a document or notification was received or issued by the Superintendent;

Idem

1.12(4) A certificate issued by the Superintendent shall be evidence of the facts stated in the certificate, without proof of the signature or official position of the Superintendent or official signing the same.

1.12(5) A signature required on a certificate referred to in subsection 4 may be printed, stamped or otherwise mechanically or electronically reproduced thereon.

Inquiries

1.13 The Superintendent may direct to an insurer, agent, broker or adjuster any inquiry related to any aspect of its contracts, financial affairs, or its acts and practices and such person shall answer promptly, explicitly and completely, and such person is, in case of delay, neglect or refusal to answer guilty of an offence.

Right of access

1.14 Every insurer, agent, broker, adjuster or other insurance intermediary shall make available and permit the Superintendent, or any person designated by the Superintendent, at any reasonable time access to and to examine to all the books, accounts, records, securities and documents and any other thing related to or impacting upon the insurance business.

Duty to furnish information

1.15(1) Persons who are licensed under this Act, former licensees under this Act, directors, officers and agents of an insurer or insurance intermediary, adjuster, the chief agent of an insurer that has its head office outside the Province and any other persons engaged in the business of insurance in the Province shall forthwith on request furnish the Superintendent or a person designated by the Superintendent with explicit and complete information of all matters,

(a) relating to any contract of insurance issued by an insurer or reinsurer;

(b) relating to any settlement or adjustment under a contract of insurance; or
(c) respecting any activities related to the business of insurance.

Idem

1.15(2) An insured person, beneficiary or assignee shall, on request, furnish the Superintendent or person designated by the Superintendent with explicit and complete information relating to any transaction or contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance.

Examination of insurers[5]

1.16(1) Once each year or more frequently as the Superintendent may consider appropriate for all provincial insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent,

(a) shall examine a provincial insurer's statements as required to be filed by this Act;
(b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
(c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

Exception

1.16(2) Subsection (1) does not apply so as to require an examination of an insurer,

(a) in respect of which the Superintendent adopts an examination by another government
(b) that is a mutual benefit society with fewer than 300 members; or
(c) where, in the opinion of the Superintendent the circumstances so warrant, in the case of any insurer or society, the examination and inquiry may be made less frequently than annually but not less than triennially

Examination expenses

1.16(3) Where the head office of an insurer is not in the Province, the Superintendent may attend at such head office to inspect and examine its affairs and to make such inquiries as the Superintendent deems appropriate and the insurer will pay the costs and expenses incurred in connection with the inquiry and examination, which shall be in addition to any amount assessed against the insurer generally.

Production of books and records

1.16(4) The officers, employees, directors or agents of the insurer shall produce its books and records howsoever and wheresoever maintained or stored, for the inspection of the

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[5] **The Act should clearly say that jurisdictions will rely on other Canadian provincial regulators for examinations**

Superintendent or other person making the inspection, and shall otherwise facilitate such examination so far as is in their power.

Idem

1.16(5) In order to facilitate any examination or inquiry the Superintendent may require the insurer to produce such books and records as the Superintendent directs at the head office or chief agency of the insurer in the Province or at such other place as the Superintendent directs.

Preparation of abstracts and valuations

1.16(6) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of any insurer and the cost thereof upon the certificate of the Superintendent shall be paid by the insurer.

Examination out of Province

1.16(7) Where the office of an insurer at which an examination is made is out of the Province the insurer shall pay the account of the Superintendent in connection with such examination upon the certificate of the Superintendent.

SERVICE OF PROCESS

Service of process

1.17(1) Where the head office of a licensed insurer is situate outside of the Province, any notice of process in any action or proceeding in the Province may be served on the insurer

(a) by any person,
  (i) by sending a copy of the notice of process to the insurer by registered mail, postage prepaid and addressed to the insurer at the most recent address filed in the office of the Superintendent or if none is filed, to the insurer's Head office wherever situate; or
  (ii) by any method as permitted by and in accordance with the rules of civil procedure of the Court of the Province; and
(b) by the Superintendent, by sending a copy of the notice of process to the insurer as above or
  (i) by courier, priority post or registered mail, prepaid and addressed to the insurer at the most recent address filed in the office of the Superintendent or if none is filed, to the insurer's Head office wherever situate, or
  (ii) by any method as permitted by and in accordance with the rules of civil procedure of the Court of the Province.

Idem

1.17(2) Any notice of process served on an insurer pursuant to this section shall be deemed to have been served and received by the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association upon actual receipt or ten days after the date of sending or mailing as the case may be, whichever is the earlier

Insurer to file address
1.17(3) Every licensed insurer shall file in the office of the Superintendent notice of its Canadian head office address and head office facsimile transmission telephone number, if any, and an address and such telephone number to which any such notice or process may be sent to the insurer, if different and shall from time to time notify the Superintendent of any change in the address and such telephone information filed with the Superintendent.

ANNUAL REPORT

1.18 The Superintendent shall prepare for the Minister such reports, annual or otherwise, as may be prescribed by the Regulations, and any such report may in the discretion of the Minister be printed and published forthwith after completion

Sub-Part B: EXAMINATION AND ENFORCEMENT

Definition
1.19 In this Part,

"examination" means examination, inquiry, appraisal, audit, investigation or inspection under this Act;

“court” includes any court in the Province having criminal jurisdiction.

Examinations, general
1.20(1) It is a condition of the licensing of a person that the person shall facilitate examinations.

Material to be furnished
1.20(2) For the purpose of an examination, the insurer, agent, broker, adjuster or former licensee shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer's, agent's, broker's or adjuster's business, finances or other affairs that are related to or impact upon insurance business, in addition to the statements or returns mentioned in this Act, as the Superintendent may require.

Duty of officers, etc.

1.20(3) The officers, agents and employees of an insurer, agent, broker or adjuster shall make available and open all books and records for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power.

Production of books

1.20(4) In order to facilitate an examination of the books and records of an insurer, agent, broker or adjuster, the Superintendent or a person designated by the Superintendent may require the insurer, agent, broker or adjuster to produce the books and records at his, her or its principal place of business in the Province, or at such other convenient place as the Superintendent may direct.

Expense of further examination

1.20(5) On the direction of the Superintendent or a person designated by him or her, if an examination of an insurer is made at an office situate outside the Province, the insurer shall pay the costs and expenses of the examination.

Powers of examination, etc.

1.21(1) A person conducting an examination, for the purpose of carrying out that person's duties,

(a) may enter any place at any reasonable time;

(b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;

(c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and

(d) may question a person on matters that are or may be relevant to the carrying out of the examination.

Entry to dwellings

1.21(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for search

1.21(3) Where a court is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the court may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

1.21(4) Where a court is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Execution and expiry of warrant

1.21(5) A warrant issued under subsection (3) or (4),

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

1.21(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede any person carrying out an examination.

Idem

1.21(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3) or (4).

Admissibility of copies

1.21(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Reporting by auditor

1.22(1) An auditor of an insurer shall promptly report to the insurer and to the Superintendent any breach and non-compliance of this Act and Regulations of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by others

1.22(2) Any other person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of and non-compliance with this Act and Regulations shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Solicitor-client privilege

1.22(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

No liability

1.23 A person who in good faith makes an oral or written statement or disclosure to the Superintendent, an employee of the Superintendent's office or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

[6]

Offences

1.24(1) Every person is guilty of an offence who,

(a) directly or indirectly furnishes false, misleading or incomplete information to the Superintendent or an organization recognized under [7] this Act, whether the information is required under this Act or is volunteered;
(b) fails to comply with any requirement of, or any order or direction made under, this Act;
(c) fails to comply with any written undertaking given to the Superintendent or to an organization recognized under this Act;
(d) contravenes this Act or the Regulations; or
(e) contravenes any term, condition, undertaking or restriction imposed by a licence.

Penalty[8]

1.24(2) Every person who is guilty of an offence under this Act is

(a) in the case of an individual, liable
    (i) on first conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding twelve months, or to both, and
    (ii) on each subsequent conviction , to a fine not exceeding $1,000,000 or to imprisonment for a term not exceeding two years less a day, or to both, and
(b) in the case of an entity, liable
    (i) on first conviction, to a fine not exceeding $1,000,000, and
    (ii) on each subsequent conviction to a fine not exceeding $5,000,000.

Additional fine

1.24(3) Where a person has been convicted of an offence under this Act, the Court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or the monetary benefits accrued to the convicted person or to the spouse or other dependant of the convicted person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

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[6] Note to Superintendents: This definition is already in the definitions section of the Act.

[7] Legislative drafters to ensure that provision of false information to a Council is an offence under the Act (see s 7.54 to 7.65)

[8] Significant concern has been expressed regarding maximum fines, the above will have to conform to various provincial regimes including POPA in New Brunswick

Order to comply

1.24(4) Where a person has been convicted of an offence under this Act, the court may, in addition to any punishment it may otherwise impose, order the person to comply with the provisions of this Act or the Regulations in respect of which the person was convicted.

Restitution

1.24(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Liability of directors, officers, agents, etc.

1.25 Where an entity commits an offence under this Act, any director, officer or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

(a) caused, authorized, permitted, assented to, acquiesced in, aided and abetted or participated in the corporation or unincorporated association in the commission of the offence, or

(b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence,

is a party to and guilty of the offence and is liable on summary conviction or on conviction on indictment to the punishment provided under this Part for the offence whether or not the entity has been prosecuted or convicted.

Application for compliance

1.26(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with,

(a) any provision of this Act or the Regulations;

(b) any order, decision, direction or inquiry made under this Act;

(c) any undertaking given; or

(d) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a court for an order directing the person to comply with or restraining the person from violating the provision, order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Application by Organization

1.26(2) An application under subsection (1) may be made by an organization recognized under this Act and Regulations in respect of a person who holds or held a licence under this Act.

Appeal

1.26(3) An appeal from a decision of a court under this section lies in the same manner, and to the same court, as an appeal from any other order of the court.

Limitation period

1.27 No proceeding for an offence under this Act may be commenced more than five years after the date on which the facts upon which the proceedings are based first came to the knowledge of the Superintendent.

Regulations

1.28 The Minister [9] may make regulations.

(a) prescribing the fees to be paid for a certified copy of an insurer licensing decision by the Superintendent,
(b) prescribing records to be kept by the Superintendent pursuant to Section 1.11,
(c) prescribing the fees and times respecting the inspection of the Superintendent's records,
(d) prescribing reports which the Superintendent is required to prepare for the Minister,
(e) prescribing organizations that may be recognized under the Act,
(f) prescribing classes of insurance and the definition of each class prescribed, and
(g) with respect to any other matter to better effect and administer this Part.

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[9] **Generally throughout this Model Act the Minister is given the authority to make regulations. Each province will determine whether the Minister or the Lieutenant Governor in Council should be given this authority.**

Part 2 - GENERAL PROVISIONS APPLICABLE TO INSURERS

Sub-Part A: GENERAL

Application of part
2.1(1) This Part applies to insurance contracts undertaken in the Province and to all insurers carrying on business in the Province.

Definition
2.1(2) In this Act,

"insurer" includes an applicant for a licence or renewal thereof;

"application" includes an application for a licence or renewal, as the case may be.

Undertaking insurance
2.2(1) Any insurer undertaking a contract of insurance that under the provisions of this Act is deemed to be made in the Province, whether the contract is original or a renewal, except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in the Province within the meaning of this Part.

Carrying on business
2.2(2) Any person that within the Province
(a) undertakes or offers to undertake insurance;
(b) sets up or causes to be set up any sign containing the name of an insurer; or
(c) maintains or operates either in its own name or in the name of an agent or other representative, any office for the transaction of the business of insurance either within or without the Province; or
(d) distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, form or like document; or
(e) makes or causes to be made any written or oral solicitation for insurance; or
(f) issues or delivers any policy of insurance or interim receipt; or
(g) collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance; or
(h) inspects any risk or adjusts any loss under a contract of insurance;
(i) prosecutes or maintains any action or proceeding in respect of a contract of insurance; or
(j) undertakes activities under circumstances as prescribed by regulations
shall be deemed to be carrying on business in the Province within the meaning of this Act.

Trafficking in life insurance policies prohibited [10]

2.3. Except as provided by this Act or Regulations, any person, other than an insurer or its duly authorized and licenced agent or broker, who advertises or holds himself, herself or itself out as a purchaser of life insurance policies or of benefits thereunder, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself, herself or itself or any other person, is guilty of an offence.

Violation of law, effect of, on claim for indemnity

2.4 Unless the contract otherwise provides, a contravention of any criminal or other law in force in the Province or elsewhere does not, by that fact alone, render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage, but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract.

LICENCES

Necessity for licence

2.5(1) Every insurer prior to carrying on business in the Province shall obtain from the Superintendent and hold a licence under the provisions of this Act.

Prohibition re; licence

2.5(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in the Province without a licence under this Act.

Idem

2.5(3) No insurer shall carry on business in the Province as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition against acting on behalf of unlicenced insurer

2.5(4) Subject to s 7.49 no person within the Province shall do or cause to be done any act or thing mentioned in section 2.2 on behalf of, or as agent of, an insurer not licensed under this Act, and any person who receives, directly or indirectly, any remuneration for so doing, is guilty of an offence.

Exception

2.5(5) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such:

(a) employees mutual benefit societies;

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[10] Proper location in Act referred to legislative drafters, intention to deal with exceptions in regulations

(b) a trade union that, under the authority of its charter, has an assurance or benefit fund for the benefit of its own members exclusively;
(c) an organization the membership of which is limited to those engaged in or who at the time they became members were engaged in a particular trade, calling or profession, that under the authority of its charter has an assurance or benefit fund for the benefit of its own members exclusively;
(d) such other entities or organizations as the Minister determines.

Unauthorized insurance
2.5(6) No insurer incorporated in the Province and licensed under this Act shall solicit or carry on business as an insurer in any other jurisdiction unless it is authorized so to do under the laws of that jurisdiction.

Reinsurance
2.6 Subject to the regulations, nothing in this Act prevents a licensed insurer that has lawfully effected a contract of insurance in the Province from reinsuring the risk or any portion thereof with any insurer transacting business out of the Province and nct licensed under this Act.

What insurers may be licenced
2.7(1) Upon due application and upon proof of compliance with this Act, the Superintendent may issue a licence to undertake contracts of insurance and carry on business in the Province to any insurer coming within one of the following types
(a) joint stock insurance companies;
(b) mutual insurance corporations;
(c) fraternal societies;
(d) companies duly incorporated to undertake insurance contracts and not within any of the foregoing types;
(e) reciprocal or inter-insurance exchanges;
(f) underwriters or syndicates of underwriters that are members of the society known as Lloyds, incorporated by the Imperial statute, Lloyds Act, 1871.

Effect of licence
2.7(2) A licence issued pursuant to this Act shall authorize the insurer named therein to exercise within the Province all rights and powers reasonably incidental to the carrying on of the class or classes of insurance named therein, that are not inconsistent with the provisions of this Act or with its Act, instrument of incorporation or organization.

Licence to carry on insurance business
2.8(1) Subject to the provisions of the Parts of this Act that particularly relate to any of the types of insurers mentioned in section 2.7, a licence may be issued to an insurer to carry on any one or more of the classes of insurance defined in regulations and such other classes as may be prescribed by the regulations.

Limitations or Conditions

2.8(2) A licence may be issued subject to such limitations and conditions as the Superintendent may impose or the Regulations may prescribe.

Determination of classes of insurance

2.8(3) Where a question or issue arises as to the class of insurance into which any specific contract of insurance or form of policy falls, the Superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance granted or that may be issued in respect thereto, and the policy form for the class of insurance to be used and the Superintendent's determination is effective, conclusive and final for the purposes of this Act.

Conditions of automobile insurance licence

2.9(1) A licence to carry on automobile insurance in the Province is subject to the following conditions:

(a) in any action in the Province against the licensed insurer or its insured arising out of an automobile accident in the Province, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the Province;

(b) in any action in another province or territory of Canada or a jurisdiction in the United States of America or a jurisdiction designated by Regulation, against the licensed insurer, or its insured, arising out of an automobile accident in that jurisdiction, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in this Province including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in that jurisdiction.

Penalty for breach

2.9(2) In addition to any other penalty under this Act, the licence of an insurer who commits a breach of either of the conditions of licence set out in subsection (1) may be canceled.

Scope of life insurance licence

2.10(1) Every insurer licensed for the transaction of life insurance may, subject to its Act, instrument of incorporation or organization, under the authority of its licence, unless the licence expressly provides otherwise,

(a) issue annuities and endowments of all kinds; and

(b) include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and accidental death insurance.

Scope of fire insurance licence

2.10(2) Every insurer licensed to carry on fire insurance may, subject to its Act, instrument of incorporation or organization and any restrictions prescribed by its licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion, and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed by the Regulations.

Insurance of automobiles

2.10(3) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling under *Part 8 Sub Part A - Fire Insurance* of this Act.

Minimum capital requirements for joint stock company - life insurance

2.11(1) A licence shall not be issued to a joint stock life insurance company not licensed before this section comes into force, unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence, to transact the business of life insurance, the company has unimpaired paid up capital and surplus of not less $5,000,000, or such greater amount as the Superintendent in the circumstances may require.

Minimum capital requirements for joint stock company - insurance other than life

2.11(2) A licence shall not be issued to a joint stock insurance company, other than a life insurance company, not licensed before this section comes into force, unless the company furnishes to the Superintendent satisfactory evidence that if the company is applying for a licence, to transact any insurance other than life insurance, the company has unimpaired paid up capital and surplus of not less than $3,000,000, or such greater amount as the Superintendent in the circumstances may require.

Minimum capital requirements for other insurers [11]

2.11(3) A licence shall not be issued to an insurer mentioned in paragraph 2.7(1)(b), (c), or (f), not licensed before this section comes into force, unless the insurer furnishes to the Superintendent satisfactory evidence that the insurer has net surplus of unimpaired assets over all liabilities, together with the contingent liability of members, if any, that exceeds the amount fixed by subsections (1) or (2) for the unimpaired paid up capital and surplus of joint stock insurance companies for the respective classes of insurance mentioned therein.

Proof of compliance

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[11] Existing provincial mutual companies will require grandfathering under transitional provisions

2.11(4) A licence shall not be issued to any insurer except upon proof satisfactory to the Superintendent that the insurer has complied with the provisions of this Act and Regulations applicable to it.

Exemption order

2.11(5) On the report of the Superintendent, the Minister may by order exempt an insurer from the minimum capital requirements set out in this section, if the insurer is carrying on business only in the Province or in the Province and in such other province or provinces as approved by the Minister, or if the insurer is offering a specialized or limited service that on the recommendation of the Superintendent in the opinion of the Minister does not require the support of higher capital or surplus requirements.

Idem

2.11(6) An exemption order under this section may be made subject to such conditions as the Minister deems appropriate and may impose.

Documents to be filed

2.12(1) The documents required to be filed for issuance of a license shall be set out in regulations

Evidence

2.12(2) The applicant for a licence has the onus and shall furnish such evidence as establishes that all of the requirements of this Act and of the Superintendent have been complied with and that the applicant is entitled to the licence applied for.

Cost of examination

2.12(3) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.

Statement of organization expenditures and liabilities

2.13(1) Upon application being made for a licence by an insurer incorporated under the laws of the Province after the commencement of this Act, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with its incorporation and organization, and therein a list of all unpaid liabilities, if any, arising directly or indirectly out of such incorporation and organization.

Permissible payments

2.13(2) Until the licence is granted, no payment on account of such expenses and liabilities of incorporation or organization shall be made out of the money paid in by shareholders, except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expenses of travel, if any.

Conditions precedent to issue of licence

2.13(3) The Superintendent shall not issue the licence until he or she is satisfied that all requirements of this Act and of any other Act as to subscriptions of shares in the capital of the insurer, the payment of money by subscribers and shareholders on account thereof, the election of directors and other preliminaries have been complied with, and unless he or she is satisfied that the expenses of incorporation and organization including any commission payable in connection with the subscription or sale of shares in the capital of the insurer, are reasonable.

Name of insurer

2.14 The Superintendent may refuse to licence an insurer where the name of the insurer is,
(a) the same as or similar to the name of another insurer and the assumption or use of the name in the Province would be likely to deceive or mislead the public; or
(b) if the name of the insurer is objectionable on any public grounds.

Power of attorney of chief agent

2.15(1) Every licensed insurer that has its head office outside the Province shall file with the Superintendent an executed copy of a power of attorney from the insurer to a chief agent resident in the Province.

Execution of power of attorney

2.15(2) The power of attorney shall be under the seal of the insurer, and shall be signed by the president and secretary or other proper and authorized officers of the insurer in the presence of a witness who shall make oath as to its due execution.

Authentication

2.15(3) The official positions held by the officers signing the power of attorney shall be verified by an oath of a person cognizant of the fact.

Contents of power of attorney

2.15(4) The power of attorney shall declare at what place in the Province the chief agent of the insurer is and shall expressly authorize the chief agent to receive service of process in all actions and proceedings against the insurer in the Province for any inquiry, claims or liability incurred by the insurer therein, and also to receive from the Superintendent all notices that the law requires to be given, or that it is thought advisable to give, and shall declare that service of process for or in respect of such claims or liability on the chief agent is legally effective and binding on the insurer.

Authority conferred

2.15(5) The power of attorney may confer upon the chief agent any further or other powers that the insurer considers advisable.

Effect of copy as evidence

2.15(6) The production of a copy of the power of attorney certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person therein named to act on behalf of the insurer in the manner and for the purposes set forth in the certified copy.

Changes in chief agent

2.15(7) Where the insurer changes its chief agent in the Province, it shall, within seven days of the appointment, file with the Superintendent a similar power of attorney, stating the change and containing a similar declaration as to service of process and notices.

Service of process thereafter

2.15(8) After the power of attorney is filed, any process in any action or proceeding against the insurer for any inquiry, claims or liability incurred in the Province may be validly served on the insurer upon its chief agent, but nothing in this section renders invalid service in any other mode in which the insurer may be lawfully served.

Form of licence

2.16(1) The licence shall be in such form or forms for the different classes of insurers as may be from time to time determined by the Superintendent, and shall specify the classes of insurance to be carried on by the insurer.

Filing Requirements

2.16(2) A licence remains in effect, subject to filing of annual reports and payment of annual fee as prescribed by the Minister, and subject to the qualifications and the requirements of the Act and regulations until it is suspended, revoked or cancelled under this Act

Variation of licence terms and conditions

2.16(3) Despite any other provision, the Superintendent may, at any time and in respect of any licence of an insurer,

(a) set or vary a term for a licence;
(b) impose any conditions, limitations or prohibitions that the Superintendent considers appropriate relating to the carrying on of the insurer's business; or
(c) vary, amend or revoke any condition, limitation or prohibition to which the licence is subject.

Failure to pay undisputed claim or judgment

2.17 Upon written notice to the Superintendent and upon proof of an undisputed claim arising from loss insured against in the Province remaining unpaid for a period of sixty days after becoming due, or of a disputed claim, after final judgment and tender of a valid discharge, being unsatisfied, the Superintendent may cancel the licence or may impose terms and conditions on the licence of the insurer; but the Superintendent shall prior thereto provide notice by registered letter mailed to the insurer at its chief agency or its head office within or outside the Province allowing and requiring the insurer within ten days to show adequate cause why its licence should not be canceled or why terms and conditions should not be imposed.

Suspension or cancellation of licence or taking possession by Superintendent
2.18(1) If the Superintendent, upon examination or from annual statements or upon other evidence

(a) determines that the assets of an insurer are insufficient to justify the continuance of the insurer in business or to provide proper security to persons effecting insurance with the insurer in the Province or that the insurer has failed to comply with any provision of law, or its Act or other instrument of incorporation or organization and of its constitution, including bylaws, rules and regulations;

(b) determines that the insurer has failed to keep unimpaired any deposit required by this Act; or

(c) learns of the suspension or cancellation of the licence of an insurer by any government,

the Superintendent after giving the insurer an opportunity to be heard, he or she may order,

(d) the licence of the insurer suspended or revoked and canceled, or

(e) the Superintendent may take control of the assets of the insurer if incorporated or organized under the laws of the Province or if the insurer is not incorporated or organized in the province the Superintendent may take control of only those assets of the insurer that are in the Province or that are under the control of the insurer's chief agent in the Province.

Interim Order
2.18(2) Despite subsection (1), if the Superintendent is of the opinion that the interests of the public may be adversely affected by any delay in making an order mentioned in subsection (1) the Superintendent may, without prior notice, issue an interim order at any time whether before the expiry of any notice period, or prior to or during any hearing and immediately may suspend, cancel or take control of the assets of the insurer.

Notice
2 19(3) Upon the publication of notice of any suspension or cancellation of licence in the *Gazette*, any person transacting any business on behalf of the insurer unless so expressly directed by the Superintendent or for winding-up purposes is guilty of an offence.

Limited or conditional licence

2.19(4) The Superintendent may issue a modified, limited or conditional licence as is deemed necessary for the protection of persons in the Province who have effected or effect contracts of insurance with the insurer.

Assets not accounted for

2.20(1) Where the Superintendent is of the opinion that an insurer incorporated or organized under the laws of the Province may not be able to account satisfactorily for any assets that appear or should appear on its books and, upon investigation, the Superintendent is satisfied that any such assets cannot be satisfactorily accounted for and that the circumstances so warrant, the Superintendent by Order may immediately take possession and control of the assets of such insurer and maintain such control on his or her own initiative for a period of ten days and, with the concurrence of the Minister, for any longer period that the Superintendent may order.

Release of assets

2.20(2) The Superintendent may release any assets under his or her possession and control that he or she considers advisable for the purposes of the insurer.

Power of Superintendent upon taking control

2.20(3) If the Superintendent has taken possession and control of the assets of the insurer he or she shall thereafter conduct the insurer's business and take such steps as in his or her opinion should be taken toward its rehabilitation, and for such purposes the Superintendent has all the powers of the board of directors of the insurer, and, without limiting the generality of the foregoing, the Superintendent may,

(a) exclude the directors, officers, employees and agents of the insurer from the premises, property and business of the insurer; and

(b) carry on, manage and conduct the operations of the insurer and in the name of the insurer preserve, maintain, realize, dispose of and add to the property of the insurer, receive the incomes and revenues of the insurer and exercise all the powers of the insurer.

Application to court

2.20(4) Prior to or while the Superintendent has possession and control of the assets of an insurer under this section, the Superintendent may apply to the court for an order for the winding up of the insurer.

Appointment of managers

2.20(5) Where the Superintendent is in possession and control of the assets of an insurer and is conducting its business, he or she may appoint one or more persons to manage and operate the business of the insurer and,

(a) each person so appointed is a representative of the Superintendent; and
(b) the remuneration of any such person, other than an employee of the office of the Superintendent, shall be fixed by the Superintendent.

Relinquishing control

2.20(6) At such time as the Superintendent believes that an insurer whose assets are in the possession and control of the Superintendent meets all the requirements of this Act and that it is otherwise proper for the insurer to resume possession and control of its assets and the conduct of its business, the Superintendent may, in writing, relinquish to the insurer the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Appeal

2.21(1) An insurer may appeal to the Court from an order made under this Part by the Superintendent or Minister within thirty days after the delivery of a copy of the order to an officer of the insurer.

Stay

2.21(2) An order made by the Superintendent, Minister or Court shall take effect immediately and, any appeal to the Court does not stay the order unless expressly so ordered stayed by a judge of the Court.

Further decision

2.21(3) Despite the determination of the appeal under this section, the Superintendent and Minister have power to make any further orders where there is a material change in the circumstances, and any such further order is subject to appeal under this section.

Reinstatement of licence

2.22 Where the licence of an insurer is suspended, it may be reinstated if the insurer makes good the deposit, or all deficiencies, or remedies its defaults, as the case may be, to the satisfaction of the Superintendent.

DEPOSITS

Deposits

2.23(1) At any time, the Superintendent may require an insurer to deposit, in any amount the Superintendent considers necessary, securities acceptable to the Superintendent and on such conditions as the Superintendent considers proper.

When to be made

2.23(2) The securities shall be deposited with the Superintendent within thirty days of the date that the requirement is made or within such longer period of time as is agreed to by the Superintendent.

Withdrawal of deposit

2.23(3) No part of a deposit shall be withdrawn without the express prior written approval of the Superintendent.

Failure to comply

2.23(4) The Superintendent may suspend the licence of an insurer that fails to deposit securities in the amount and within the time required by the Superintendent.

Vesting

2.23(5) Securities deposited with the Superintendent are vested in the Superintendent without any formal transfer.

Interest

2.23(6) The insurer is entitled to the interest and dividends paid on securities while the securities are on deposit with the Superintendent, if the insurer is in compliance with this Act.

Substitution

2.23(7) The Superintendent may permit an insurer to substitute other securities for those deposited by the insurer.

Reciprocal deposits

2.23(8) If an insurer incorporated under the laws of the Province or a reciprocal insurance exchange, wants to be licensed by another province that requires a deposit, the Superintendent may hold securities as a deposit on a reciprocal basis for the other province.

Purpose of deposits

2.23(9) The Superintendent shall hold and administer a deposit as security for contracts of the insurer in the Province and for any contracts in a reciprocating province.

Order to fix amount

2.23(10) If a reciprocating province requires that the amount of a deposit be in a fixed amount, the Minister may, by order, fix the required amount of the deposit and list the reciprocating provinces with respect to the deposit.

Claims

2.23(11) If an insurer that has deposited securities with the Superintendent under this section ceases to carry on the business of insurance in the Province or if its licence is suspended or canceled under this Act, the Superintendent shall notify each reciprocating province of the cessation, suspension or cancellation. The notice shall state that the reciprocating province is entitled to submit to the Superintendent an accounting of all claims and liabilities outstanding in the reciprocating province in respect of the insurer before the deposit is released to the insurer.

Out-of-province insurer
2.23(12) If the Superintendent is notified that an insurer that has deposited securities with the Superintendent has ceased to transact business in a reciprocating province or that the insurer's licence to transact the business of insurance has been suspended or canceled in that province, the Superintendent may, at the request of the reciprocating province, take any action that the Superintendent could take if the insurer ceased to carry on the business of insurance in the Superintendent's Province or could take if the licence of the insurer were suspended or canceled in such Province.

Notice to insured
2.23(13) If the Superintendent receives notice that an order has been made in another province for the administration of a deposit of an insurer in respect of which the Province is a reciprocating province and that a date has been fixed by the trustee in the other province for the termination of the administration of the deposit, the Superintendent shall give notice of the termination date to persons insured under policies issued by the insurer in the Province.

Application to court
2.23(14) The Superintendent may, at any time, make application to a court of competent jurisdiction for directions regarding the administration of securities deposited by an insurer under this section.

Sub-Part B: RECORDS and REPORTING

RETURNS

Returns
2.24(1) As and when required by the Superintendent, licensed insurers shall prepare and file with the Superintendent or with an agency designated by the Superintendent a return respecting any aspect of the experience of any class of the insurer's business, including financial, actuarial and statistical, in a form approved by the Superintendent containing such information as the Superintendent may require.

Compilation of data
2.24(2) The Superintendent may require and contract with any agency so designated to compile the data so filed in such form as he or she may approve, and the expense of

making the compilation shall be apportioned among the insurers whose data is compiled by such agency by the Superintendent, who shall certify in writing the amount due from each insurer, and it is payable by the insurer to such agency forthwith.

Audit and direction

2.24(3) If it appears to the Superintendent that the insurer's records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Superintendent may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit.

Expenses of audit

2.24(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Superintendent stating the amount payable.

Debt to the Crown

2.24(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Superintendent's certificate becomes a debt owing to the Crown.

Information on claims

2.25 Every insurer shall provide the Superintendent or an agency designated by the Superintendent with information prescribed by the Regulations about applications for insurance and claims made to the insurer at such times and subject to such conditions as are prescribed by the Regulations.

Annual and interim statements

2.26(1) Unless otherwise exempt by this Act, every licensed insurer shall,

(a) prepare annually and deliver to the Superintendent or his or her designate, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended, at the election of the company in its by-laws, on the fiscal year end of the company or the 31st day of December next preceding the delivery of the statement; and

(b) prepare and deliver to the Superintendent or his or her designate when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of annual statement

2.26(2) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall include and set out,

(a) the assets, liabilities, revenues and expenses of the insurer for the year;
(b) particulars of the business done by the insurer in the Province during the year; and
(c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Indirect collection of personal information
2.26(3) Notwithstanding any other Act, the Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

Auditor's report
2.27 A statement of the condition of affairs of an insurer under clause 2.30 (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

Modified statement
2.28 The Superintendent may, in lieu of the annual statement required to be filed by all insurers under clause 2.30(1) (a), direct the preparation of a modified statement respecting the business of the insurer in the Province only.

Who may verify statement
2.29 In the case of a corporation, annual and interim statements shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation.

Actuarial opinion and certificate - non-life and accident & sickness classes
2.30 Every insurer licensed to transact other than life insurance or accident and sickness insurance, under this Act shall submit with the annual statement required by this Act, an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims and claims adjustment expenses as of the end of the year covered by the annual statement and such further opinions with respect to such other matters as the Superintendent may require.

Idem - life insurance
2.31 The annual statement of an insurer incorporated and licensed under the laws of the Province to transact life insurance or accident and sickness insurance, except contracts of fraternal societies licensed under this Act, shall include a certificate, in the manner required by the Superintendent, given by the actuary of the insurer.

Level of assets to be maintained

2.32 Every insurer licensed under this Act shall maintain assets, exclusive of any investments of the insurer that are not authorized by this Act or that were not authorized by law at the time of acquisition, in an amount that bears not less than a reasonable relationship to the outstanding liabilities, premiums and loss experience of the insurer, all in accordance with such calculation as may be prescribed by the Regulations.

Exemption from filing requirements

2.33(1) The Superintendent may, in writing, exempt completely or in part any insurer or any category of insurer from any requirements, including any or all filing requirements, imposed under this Part for the period of time specified in the exemption.

Reasons for decision

2.33(2) The Superintendent shall provide written reasons with respect to any decision granting or denying any exemption under this section.

Preparation of financial statements

2.34 The financial statements required under this Act shall be prepared in accordance with this Act and the Regulations.

Statements that financial standing guaranteed by government prohibited

2.35 Every person who represents orally or in writing that the issue of a licence to an insurer or the printing or publication of an annual statement in the report of the Superintendent or in any other publication of the Superintendent or any other circumstance of the supervision or regulation of the business of the insurer by law or the Superintendent, or by a compensation association, is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity is guilty of an offence.

Sub-Part C: ASSESSMENTS AND FEES

2.36 The Minister may establish fees in relation to any matter under this Act.

Assessment of Insurers

2.37(1) The Superintendent may assess all insurers with respect to all expenses incurred and expenditures made by the Superintendent's office and the Province in respect of the administration of this Act and such other Acts as may be prescribed by the Regulations.

Idem

2.37(2) If an assessment is made under this Part, the share of a particular insurer shall be determined in the manner prescribed by Regulation and the amount of assessment determined and certified by the Superintendent is binding upon each and all insurers and the assessment shall be final and conclusive.

2.37(3) The Superintendent may undertake directly or indirectly any activities, or provide any services to or with respect to any insurer, as the Superintendent deems appropriate, and the cost and expenses incurred may be charged to the insurer and such charges shall be in addition to any amount assessed or charged against the insurer under this Act.

Insurer's duty to pay

2.37(4) An insurer shall pay all amounts assessed or charged against it.

Debt to Crown

2.37(5) The amount assessed against or charged each insurer constitutes a debt payable to Her Majesty and is payable upon demand of the Superintendent and may be recovered as a debt in any court of competent jurisdiction.

Suspension for nonpayment

2.37(6) If an insurer fails to pay an assessment, fee or charge made under this Part, the Superintendent may suspend or cancel the insurer's licence in addition to any other remedy or conditions that the Superintendent may deem appropriate.

Reinstatement of licence

2.37(7) The Superintendent may reinstate the licence of an insurer whose licence was suspended or canceled under subsection (5) if the insurer pays all amounts owing by the insurer under this section.

Publication

2.37(8) The annual report of the Superintendent made pursuant to this Act shall show the total amount assessed and charged against licensed insurers pursuant to this section and the amount paid by each insurer.

Exception

2.37(9) This section does not apply to an expenditure incurred by a Rate Board in carrying out its duties under or related to this Act.

Sub-Part D: REGULATIONS AND FORMS

Regulations

2.38(1) The Minister may make Regulations,

a) prescribing Acts for the purpose of assessments;
b) prescribing the term of any licence granted to an insurer with respect any licence;

c) prescribing ratios, percentages, amounts and calculations and any such Regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;
d) prescribing a maximum proportion of risks that may be reinsured with insurers that are not licensed under this Act and such proportion may vary for different classes of insurance;
e) prescribing reciprocal jurisdictions with respect to the reciprocal mutual licencing of insurers and agents, brokers and adjusters;
f) prescribing the information to be provided and any conditions that apply to the provision of the information;
g) prescribing categories of insurers for any other purpose;
h) prescribing dates for the filing of any information or reports required to be filed with the Superintendent;
i) governing the preparation of financial statements required under this Act or the regulations;
j) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
k) exempting a person or class of persons from any provision of this Act, subject to such terms and conditions as may be specified in the Regulations;
l) governing the sale and marketing of prescribed classes of insurance to members of a group, including prescribing and regulating qualifications for membership in groups;
m) governing group insurance contracts or schemes, or any class thereof including prescribing and regulating their terms and conditions, qualifications for membership in groups and regulating the marketing of group insurance contracts or schemes;
n) prescribing and defining the terms and conditions upon which an insurer licensed to transact the business of life insurance may invest its funds in fully paid shares of other corporations under the provisions of this Act;
o) prescribing classes of bodies corporate in whose fully paid shares a mutual insurance corporation that is a participant in the Fire Mutuals Guarantee Fund may invest its funds and setting out what constitutes control;
p) prescribing and defining the terms and conditions upon which an insurer may invest its funds in the fully paid voting shares of a dealer within the meaning of the Securities Act;
q) governing the advertising of insurance contracts or any class thereof including prescribing and regulating the form and content of advertisements and requiring their filing;
r) governing the collection, use and disclosure of personal information by insurers or a class of insurers and, for that purpose, defining personal information;
s) prescribing the method of determining the share of an assessment that is payable by an insurer;

t) prescribing amounts incurred by the Ministry of Health that may be subject to an assessment;
u) respecting the relations between insurers, agents or brokers and,
    i. entities that undertake the business of financial services,
    ii. financial services intermediaries, and
    iii. customers of persons and entities referred to in subparagraphs i and ii;
v) respecting networking arrangements between insurers and other persons providing products or services to the insurer or its customers;
w) prohibiting or restricting networking arrangements;
x) governing the conduct of insurers, agents and brokers in networking arrangements.
y) prohibiting or restricting reinsurance arrangements, including terms, conditions and amounts ceded;
z) providing for, and for the making of, reciprocal or other arrangements with any government in Canada in connection with the licensing, regulation and inspection of insurers;
aa) prescribing and defining classes of insurance for the purposes of this Act
bb) prescribing forms, including forms and signatures in electronic form, and providing for their use;
cc) prescribing terms and conditions and licensing of persons permitted to undertake trafficking in life insurance policies,
dd) prescribing the documents to be filed for the issuance of a licence pursuant to Section 2.12, and
ee) generally for the better administration of this Act.

General or particular
2.38(2) Any Regulation made under this Act may be general or particular.

Adoption by reference
2.38(3) A Regulation made under this Act may adopt by reference, in whole or in part, with such changes as the Minister considers necessary, any code, standard or guideline, as it reads at the time the Regulation is made or as amended from time to time, whether before or after the Regulation is made.

Forms

2.39(1) The Superintendent may approve forms for any purpose of this Act and the forms may provide for such information to be furnished as the Superintendent may require.

Electronic forms

2.39(2) The Superintendent may approve electronic forms, electronic filings and electronic returns for any purposes under this Act.

Sub-Part E: OFFICIAL LANGUAGES[12]

2.40(1) No insurer carrying on business in the Province shall use any form or document relating to a contract of insurance and which is to be provided to an applicant for insurance, an insured, a beneficiary or a claimant unless that form or document is provided or made available in both official languages; and every insurer shall, if the Superintendent so requests, file a copy of the form or document in each official language in the office of the Superintendent.

2.40(2) The Superintendent may require an insurer to change a form or document filed under subsection (1) and, when the Superintendent so requires, he or she shall specify in writing the reasons for requiring the change.

2.40(3) An insurer who violates subsection (1) or who fails to comply with a requirement issued by the Superintendent under subsection (2) commits an offence.

2.41(1) No insurer carrying on business in the Province shall engage a solicitor to act on behalf of an insured unless the insured has indicated to the insurer the official language the insured wishes to be used by the solicitor acting on the insured's behalf.

2.41(2) Where an insurer is required or wishes to engage a solicitor to act on behalf of an insured, the insurer shall, after the insured has indicated the official language the insured wishes to be used by the solicitor acting on the insured's behalf, engage a solicitor who uses that official language.

2.41(3) An insurer who violates subsection (1) or who fails to comply with subsection (2) commits an offence.

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[12] This sub-part will appear in the New Brunswick Act only

Part 3 - PROVINCIAL INSURANCE COMPANIES

Sub-Part A: GENERAL

FORFEITURE FOR NON-USE OR DISCONTINUANCE

3.A.1(1) If an insurer incorporated under the law of the Province does not go into actual operation within one year after incorporation, or if, after such insurer has undertaken contracts, it discontinues business for one year, or if its licence remains suspended for one year, or is canceled, the insurer's corporate powers shall there upon cease and determine, except for the sole purpose of winding up its affairs; and the court upon the application of the Superintendent, or of any person interested, may limit the time within which the insurer shall settle and close its accounts, and may, for that purpose and for the purpose of liquidation generally, appoint a receiver.

3.A.1(2) No such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of the forfeiture.

3.A.1(3) In any action or proceeding where such non-user is alleged, proof of user shall be upon the insurer.

WINDING-UP

3.A.2(1) When an insurer incorporated or continued under the laws of the Province proposes to go into voluntary liquidation, at least one month's notice thereof shall be given to the Superintendent and sections 3..A..3 to 3.A.7 inclusive of this Act shall apply.

3.A.2(2) The notice shall state the date at which the insurer will cease to take contracts, the intention of the insurer to apply on a stated date for the appointment of a liquidator, and the name and address of the proposed liquidator.

3.A.2(3) No such insurer shall go into voluntary liquidation or otherwise arrange for the winding-up of its affairs without the written consent of the Superintendent.

3.A.3 Where an insurer is wound up, each person contracted with on the cash plan is entitled to a refund of the unearned proportion of the cash premium calculated from the date at which the insurer, according to the notice, ceased to undertake contracts; but this does not affect any other remedy that such person has against the insurer.

3.A.4(1) Upon a winding-up, the liquidator may, without the consent of the policyholders, arrange for the reinsurance of contracts in some other licensed insurer, and for the purpose of securing the reinsurance, the entire assets of the insurer in the Province shall be available, except the amount required to pay the claims of the preferred creditors, the costs of liquidation, and the claims accrued under contracts, of which the insurer has received notice prior to the date of the reinsurance; all such payments are a first charge upon the assets of the insurer, and its other creditors shall be entitled to a dividend on their claims only if the assets are more than sufficient to provide for such payments and the reinsurance.

3.A.4(2) If the assets of the insurer are insufficient to provide for such payments, and the reinsurance in full, the liquidator may effect reinsurance of such a percentage of the several contracts as the available assets provide.

3.A.4(3) No contract of reinsurance made in pursuance of this section shall become effective until approved by the Superintendent and the court.

3.A.4(4) If the liquidator fails to secure reinsurance, the assets shall, subject to the payment of the costs of liquidation and the preferred claims, be available to pay the claims of the policyholders, calculated as at the date of winding-up, in the manner provided in the case of the administration of a deposit.

3.A.4(5) Nothing in this section shall prejudice or affect the priority of any security interest in, or any mortgage, lien, charge or other encumbrance on, the property of the insurer.

3.A.5 Where the insurer being a corporation is not constituted exclusively or chiefly for insurance purposes and the insurance branch and fund are completely severable from every other branch and fund of the corporation, the word "insurer" for the purposes of sections 3.A.4 and 3.A.5, means only the insurance branch of the corporation.

3.A.6(1) Where a fraternal society, incorporated under the law of the Province, transacts endowment or expectancy insurance and has an endowment fund separate and distinct from its life insurance fund, the society may, by resolution passed at a general meeting after at least one month's notice of such intended resolution, determine that the endowment or expectancy insurance be discontinued and that the endowment or expectancy fund be distributed among the members then in good standing who are contributing to the fund, to each member *pro rata* according to his total contribution.

3.A.6(2) After the resolution is assented to by the Superintendent and filed with the Superintendent, the executive officers may proceed to ascertain the persons entitled to rank upon the fund and may distribute the fund among those entitled, and such distribution discharges the society and all executive officers thereof from all liability in respect of the fund and of the endowment or expectancy contracts undertaken by the society.

3.A.6(3) If all the members interested in the endowment or expectancy fund are also interested as holders of life insurance contracts, the general meeting, instead of determining that the endowment or expectancy fund be distributed, may determine that the fund be converted into or merged in a life insurance fund, and after the resolution is so assented to and filed, the endowment or expectancy fund shall become and be a life insurance fund.

3.A.7 For the purpose of a voluntary winding-up the Superintendent may extend the licence of the insurer.

AMALGAMATION AND TRANSFER

Definition

3.A.8. In this Part,

"transfer" means an arrangement whereby contracts made in the Province by a licensed insurer incorporated or organized under the laws of the Province or any class or group of such contracts are undertaken by or transferred to another insurer either by novation, transfer or assignment or as a result of amalgamation of the insurers, and includes a transmission by operation of law.

Application

3.A.9 Nothing in this Part affects reinsurance of individual risks made by insurers in the ordinary course of business.

Amalgamation: compliance with law where incorporated

3.A.10 In the case of the amalgamation of insurers, if one of the contracting insurers is an insurer not incorporated or organized under the law of the Province, the Superintendent shall not approve the transfer until it has been established to his or her satisfaction that the insurers party to the transfer have fully complied with the requirements of the law of the legislative authority under which the insurer was incorporated or organized, but a certificate of the supervising insurance official appointed by such legislative authority that such insurer has fully complied with the requirements of the law of the authority is sufficient evidence to the Superintendent of that fact.

Transfer agreements

3.A.11(1) The details of the transfer shall be in writing setting out in full the terms and conditions of the transfer, but no transfer agreement shall be entered into without the prior permission of the Superintendent and the transfer is not binding or effective until approved by the Superintendent.

Saving

3.A.11(2) Upon the approval of the Superintendent, the transfer is valid and binding despite any irregularity in procedure or any failure to comply with the procedural provisions of this Part.

Approval of Superintendent
3.A.12. The insurers who enter into such a transfer agreement, within thirty days from the date of its execution or such longer period of time as the Superintendent may direct, shall apply to the Superintendent for approval of the transfer.

Documents to be filed with Superintendent
3.A.13. Upon the filing of the application, the insurers party to the transfer shall deposit with the Superintendent,

(a) a certified copy of the transfer agreement;
(b) a statement of the nature and terms of the transfer;
(c) certified copies of the statements of assets and liabilities of the insurers party to the transfer agreement;
(d) certified copies of the actuarial or other reports upon which the transfer agreement is founded;
(e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer that to the best of their knowledge and belief every payment made or to be made to any person whatsoever on account of the transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the transfer;
(f) evidence of the service of the notices required with respect to amalgamations and transfers, if any;
(g) such other information and reports as the Superintendent may require.

Approval or rejection of transfer
3.A.14(1) After receiving the application, the Superintendent may,

(a) invite written submissions and, after considering all the submissions, approve or reject the transfer; or
(b) fix a day for a hearing to consider the application and, after the hearing, approve or reject the transfer.

Notice
3.A.14(2) Subject to subsection (3), the Superintendent shall determine what notice is adequate for the purposes of subsection (1) and shall direct who shall give the notice.

Idem
3.A.14(3) In the case of life insurance,

- (a) the notice shall be served on the shareholders or members and on all policyholders in the Province;
- (b) the notice shall include,
  - (i) a statement of the nature and terms of the transfer,
  - (ii) an abstract containing the material facts embodied in the transfer agreement under which the transfer is proposed to be effected, and
  - (iii) copies of the actuarial or other reports upon which the transfer agreement is founded, including a report by an independent actuary; and
- (c) the Superintendent may also direct that the transfer agreement be open to inspection by policyholders, shareholders or members at the principal offices of the insurers in the Province for a period of time specified by the Superintendent.

Transfer of contracts where insurer leaves the Province
3.A.15. Where under an agreement between an insurer, in this section called the "continuing insurer", and another insurer, in this section called the "retiring insurer", in anticipation of the retiring insurer ceasing to do business in the Province, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer and the retiring insurer ceases to carry on business in the Province, an insured or other person entitled to rights under those contracts may enforce the rights as though those contracts had been issued by the continuing insurer.

Sub-Part B: STOCK INSURANCE CORPORATIONS

INTERPRETATION, APPLICATION and TRANSITION

Definitions
3.B.1(1) In this Act,

(a) **"body corporate"** means any body corporate with or without share capital and wherever or however formed or incorporated;

(b) **"director", or "board of directors"** – means an individual or individuals occupying the position and office of director, by whatever name called, of a body corporate, "board of directors" or "directors" refers to the directors of a body corporate as a body corporate as board, and includes the board of directors of a company incorporated or continued and licensed under the laws of the Province to carry on a mutual insurance business in the Province.

(c) **"extra-provincial company"** means an insurer that is incorporated in a foreign jurisdiction other than in the Province and that is authorized by that jurisdiction to carry on the business of insurance in that jurisdiction;

(d) **"incorporated"**, when used with reference to a body corporate that is incorporated by or under an Act of Parliament of the legislature of a Province, also refers to a body corporate that is continued by or under any such Act;

(e) **"incorporator"**, in respect of a provincial company, means a person who applies for the incorporation of the company;

(f) **"instrument of incorporation" or "incorporating instrument"** means the special Act, letters patent, charter, certificate, instrument of continuance or other constating instrument or document by which a body corporate was incorporated and came into existence, continued or amalgamated and includes any amendments to or restatement of the constating instrument;

(g) **"life company"** means a company or provincial company that is permitted to insure risks falling within the class of life insurance, other than a company or provincial company that is also permitted to insure risks falling within any other class of insurance, other than accident and sickness insurance, accident insurance, personal accident insurance, sickness insurance and loss of employment insurance;

(h) **"property and casualty company"** means a company or provincial company that is not a life company;

(i) **"provincial company"** means an insurer incorporated under this Act;

(j) **"provincial life company"** means a provincial company that is a life company;

(k) **"provincial property and casualty company"** means a provincial company that is a property and casualty company;

(l) **"proxy"** means a completed and executed form of proxy by means of which a participating policyholder or shareholder appoints a proxyholder to attend and act on behalf of the participating policyholder or shareholder at a meeting of participating policyholders or shareholders;

(m) **"proxyholder"** means the person appointed by proxy to attend and act on behalf of a participating policyholder or shareholder at a meeting of participating policyholders or shareholders;

(n) **"significant interest"** means an interest in a class of shares of a body corporate where the aggregate of

   (a) any shares of that class beneficially owned by a person, and

(b) any shares any shares of that class beneficially owned by entities c controlled by that person

exceeds 10% of all outstanding shares of that class of shares of the body corporate

(o) **"special resolution"** means a resolution passed by a majority of not less than two thirds of the votes cast by or on behalf of the participating policyholders or shareholders who voted in respect of that resolution or signed by all the participating policyholders or shareholders entitled to vote on that resolution;

(p) **"voting share"** means a share of any class of shares of a body corporate carrying voting rights under all circumstances or by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled.

Application of Act

3.B.1(2) This Act applies to every body corporate

(i) that was incorporated by or under a general or special act of the Legislature of the Province and which was so incorporated for the purpose of carrying on business as an insurance company and licenced at any time to carry on the business of insurance under this Act,
(ii) that is incorporated under this Act,
(iii) that is deemed incorporated under this Act, or
(iv) that is continued under this Act

and that is not discontinued under this Act.

Incorporation of insurers

3.B.1(3) All applications for incorporation of insurers intending to undertake contracts of insurance in the Province shall be made solely pursuant to and as provided in this Act.

Conflicting Provisions

3.B.1(4) Where there is a conflict or inconsistency between a provision of this Act and a provision of the incorporating instrument under another general Act or a special Act, the provision of this Act prevails.

Transition

3.B.1(5) Notwithstanding any other provision of this Act or the Regulations and except and subject only to this section, pursuant either to a specific request in writing made, by a company continued, incorporated or deemed incorporated under this Act or under a predecessor general or special Act, within 6 months of the coming into force of this Act, or upon the recommendation of the Superintendent, the Minister may, in his or her discretion, by order in writing with reasons, grant to the company permission or compel the company, as the case may be, to undertake any specific act or conduct not otherwise authorized or in compliance with this Act and to impose in connection therewith such transitional time period and such further conditions as the Minister deems appropriate, as this section permits.

Business plan
3.B.1(6) A company shall provide to the Minister a detailed operations and temporal business plan with respect to effecting compliance at the earliest possible reasonable opportunity in regard to each act or conduct contemplated by this section.

Policyholder protection
3.B.1(7) The Minister shall take into account the business plan submitted, the financial solvency and integrity of the insurer and in particular, policyholder and consumer interests, and the time period, if any, specified by the Minister to effect compliance shall not exceed three years from the date of the coming into force of this Act.

STATUS AND POWERS

Capacity of provincial company
3.B.2(1) Subject to this Act, the Regulations, its by-laws and any term or condition in its instrument of incorporation or licence, a provincial company

(a) has the capacity and the rights, powers and privileges of a natural person, and
(b) has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside the Province to the extent and manner that the laws of that jurisdiction permit.

Powers restricted
3.B.2(2) A provincial company shall not

(a) carry on business or exercise any right, power or privilege that it is restricted or prohibited from carrying on or exercising by this Act, the Regulations, its by-laws or any term or condition in its incorporating instruments or licence, or
(b) exercise any of its rights, powers and privileges in a manner that contravenes this Act or the Regulations.

No invalidity
3.B.2(3) No act of a provincial company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to the company's incorporating instrument or this Act.

By-law not necessary
3.B.2(4) It is not necessary for a provincial company to pass a by-law in order to confer any particular power on a company or its directors.

No personal liability

3.B.2(5) The shareholder and participating policyholders of a provincial company are not, as shareholders or policyholders, liable for any liability, act or default of the company except as otherwise provided by this Act.

Constructive notice

3.B.3 No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a provincial company by reason only that the document has been filed with the Superintendent or is available for inspection at an office of the company.

Authority of directors, officers and agents

3.B.4 A provincial company, a guarantor of an obligation of the company or a person claiming through the company must not assert against a person dealing with the company or dealing with any person who has acquired rights from the company

(a) that the instrument of incorporation or by-laws have not been complied with,
(b) that the persons named in the most recent notice of directors filed with the Superintendent under this Act are not the directors of the company,
(c) that a person held out by the company as a director, an officer or an agent of the company
  (i) has not been duly appointed, or
  (ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,

or

(d) that a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine, unless the person has, or by virtue of the person's position with or relationship to the company ought to have, knowledge of those facts at the relevant time.

Main business

3.B.5(1) Subject to this Act and the Regulations, a provincial company must not engage in or carry on any business other than

(a) the business of insurance, or
(b) the business of providing financial services.

3.B.5(2) For the purposes of this Act, the business of insurance includes any activity that is reasonably ancillary to the business of insurance.

3.B.5(3) For the purposes of this Act, the business of providing financial services includes in respect of a provincial company

(a) acting as a receiver, liquidator or sequestrator,
(b) issuing payment, credit or charge cards and, in co-operation with others including other financial institutions, operating a payment, credit or charge card plan,
(c) providing real property brokerage services,

(d) holding and otherwise dealing with real property,
(e) providing information processing services that the company has developed for its own use and that are an integral part of the company's operations to entities in which the company has a substantial investment that do not provide information processing services to other entities,
(f) promoting merchandise and services to the holders of any payment, credit or charge card issued by the company,
(g) acting as a custodian of property,
(h) acting as a trustee for a trust in respect of a prescribed class of transaction,
(i) any of the activities referred to in section 3.B.6, and
(j) with the consent of the Superintendent, any other activity that is reasonably ancillary to the business of providing financial services.

3.B.5(4) A provincial company shall not carry on an activity that requires registration under the *Securities Act*

Networking
3.B.6 A provincial company may
(a) act as agent for any person in respect of the provision of any service that is provided by a financial institution or a body corporate in which the company is permitted to have a substantial investment,
(b) enter into an arrangement with any person in respect of the provision of that service, or
(c) refer any person to any such financial institution or body corporate.

Life insurance policies[13]
3.B.6.1 No insurer incorporated and licensed under the laws of the Province to transact life insurance shall issue a policy that does not appear to be self-supporting upon reasonable actuarial assumptions as to interest, mortality and expenses.

Security interests
3.B.7(1) Subject to subsection (2), a provincial company must not create a security interest in any property of the company to secure an obligation of the company.

Idem
3.B.7(2) This section does not apply to the creation of a security interest
(a) in relation to the reinsurance by the provincial company of risks insured by another insurer,
(b) on prescribed classes of personal property or prescribed classes of transactions, or
(c) on property having an aggregate value that is less than the prescribed amount.

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[13] This section moved from Section 10.59

Beneficial interests

3.B.8 A provincial company must not acquire any beneficial interest in property, other than by way of realization, that is subject to a security interest.

Debt obligations

3.B.9(1) A provincial life company must not, and must not permit its prescribed subsidiaries to, enter into a debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed twenty percent of the total assets of the company.

3.B.9(2) A provincial property and casualty company must not, and must not permit its prescribed subsidiaries to, enter into any debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed twenty percent of the total assets of the company.

Guarantees

3.B.10(1) A provincial company must not guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless

(a) the sum of money is a fixed sum of money with or without interest on the fixed sum, and

(b) the person on whose behalf the company has undertaken to guarantee the payment or repayment has an unqualified obligation to reimburse the company for the full amount of the payment or repayment to be guaranteed.

3.B.10(2) Subsection (1) does not apply in respect of any indemnity referred to in section 3.B.251.

3.B.10(3) Subsection (1)(a) does not apply to a provincial life company where the person on whose behalf the provincial life company has undertaken to guarantee a payment or repayment is a subsidiary of the company and is primarily engaged in insuring risks that fall within a class of insurance that the company is authorized to insure.

INCORPORATION, FUNDAMENTAL CHANGES and DISSOLUTION

Provincial insurers

3.B.11 No insurer may be incorporated, amalgamated or continued in the Province unless it is incorporated, amalgamated or continued under this Act.

Fraternal societies

3.B.12 No fraternal society may be incorporated, amalgamated or continued under the laws of the Province.

Division 1- Incorporation

Application

3.B.13(1) One or more persons who wish to incorporate a provincial company must submit an application to the Superintendent that contains the following:

(a) the information, material and evidence specified by the Superintendent;
(b) a plan for the future conduct and development of the business of the company;
(c) its proposed financial year;
(d) the location of the head office of the company in the Province;
(e) the names of the first directors of the company.

3.B.13(2) After filing an application for incorporation, the applicants must

(a) provide to the Superintendent any additional information, material and evidence the Superintendent considers necessary, and
(b) publish a notice of the application, containing any information that the Superintendent specifies, in the Gazette and in a newspaper having general circulation in the place where the head office of the provincial company is to be located.

3.B.13(3) Any person who objects to the proposed incorporation of a provincial company may, within 30 days after the date of publication in the *Gazette* under subsection (2), submit an objection in writing to the Superintendent.

3.B.13(4) On the receipt of an objection under subsection (3), the Superintendent may direct that a hearing into the objection be held.

Factors to be considered

3.B.14 Before recommending that a provincial company be incorporated, the Superintendent must take into account all matters that the Superintendent considers relevant to the application, including

(a) the nature and sufficiency of the financial resources of the applicants as a source of continuing financial support for the company,
(b) the soundness and feasibility of the plan for the future conduct and development of the business of the company,
(c) the business record and experience of the applicants, and
(d) whether the company will be operated by persons who are fit as to character or who have the competence and experience suitable for involvement in the operation of an insurer.

Incorporation
3.B.15 The Minister may, on the application of one or more persons and on the recommendation of the Superintendent, incorporate a provincial company by issuing a certificate of incorporation.

Contents of certificate of incorporation
3.B.16(1) The certificate of incorporation of a provincial company must set out the name of the company, its financial year and whether the company is a mutual provincial company.

3.B.16(2) The Minister may set out in the certificate of incorporation of a provincial company any term or condition not contrary to this Act that the Superintendent considers advisable to deal with the particular circumstances of the company.

Notice of incorporation
3.B.17 The Superintendent must publish a notice of the incorporation of a provincial company in the *Gazette*.

First directors
3.B.18 The first directors of a provincial company are the directors named in the application for incorporation.

Effective date of incorporation
3.B.19(1) A provincial company comes into existence and is incorporated on the date set out in its certificate of incorporation.

3.B.19(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes
(a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with, and
(b) that the provincial company has been incorporated under this Act on the date set out in the certificate of incorporation.

Division 2 - Organization and Commencement After Incorporation

First directors' meeting
3.B.20(1) After a provincial company is incorporated, a meeting of the directors of the company must be held within 20 days.

3.B.20(2) At that meeting the directors shall appoint an actuary to be the actuary of the company and may, subject to this Part,
(a) make by-laws,

(b) adopt forms of share certificates and corporate records,
(c) authorize the issue of shares of the company,
(d) appoint officers,
(e) appoint an auditor to hold office until the first meeting of shareholders,
(f) make banking arrangements, and
(g) deal with any other matters necessary to organize the company.

3.B.20(3) An incorporator or a director of the provincial company may call the meeting referred to in subsection (1) by giving not less than 5 days' notice to each director, stating the time and place or manner of holding the meeting.

Meeting by electronic means
3.B.20(4) A director may participate in the meeting of directors by means of telephone or other electronic telecommunication devices that permit all directors participating in the meeting to hear each other, and a director participating in such a meeting by those means is, for the purposes of this Act, present at the meeting.

Calling shareholders' meeting
3.B.21(1) When the base capital of a provincial company reaches the amount required under section 2.11, the directors of the company must forthwith call a meeting of
(a) the shareholders of the company, in the case of a company that is not a mutual provincial company, or
(b) the incorporators of the company, in the case of a mutual provincial company.

3.B.21(2) The shareholders or incorporators of a provincial company must, by resolution at the meeting called pursuant to subsection (1),
(a) approve, amend or reject any by-law made by the directors of the company,
(b) elect directors to hold office for a term expiring not later than the close of the first annual meeting of shareholders following the election or, in the case of a mutual provincial company, not later than the close of the first annual meeting of policyholders following the election, and
(c) appoint an auditor to hold office until the close of the first annual meeting of shareholders or, in the case of a mutual provincial company, until the close of the first annual meeting of policyholders.

Term of first directors
3.B.22 A director named in the application for incorporation of a provincial company holds office until the election of directors at the meeting of shareholders or incorporators referred to in section 3.B.21(1).

Carrying on of business
3.B.23 Except as permitted in sections 3.B.24 and 3.B.25, a provincial company must not carry on any business until it is licensed under this Act.

Expenses charged to capital

3.B.24 All incorporation and organization expenses of a provincial company must be paid from the capital of the company or interest on the capital and must not be charged directly or indirectly to policyholders.

No payments until licensed

3.B.25 Until a provincial company is licensed under this Act, the company must not make any payment on account of incorporation or organization expenses except reasonable sums

(a) for the payment of remuneration of not more than 2 officers,
(b) for the payment of costs related to the issue of shares of the company, and
(c) for the payment of clerical assistance, legal services, accounting services, office accommodation at one location, office expenses, advertising, stationery, postage and travel expenses.

Deposits and investments

3.B.26 Until a provincial company is licensed under this Act, the company may only

(a) deposit its capital and interest on the capital in a deposit-taking financial institution, and
(b) invest its capital and interest on the capital in securities issued or guaranteed by the Government of Canada or any province.

Time limit to acquire licence

3.B.27 If a provincial company does not become licensed within one year after it comes into existence or within any further period that the Superintendent may on application allow,

(a) its directors must forthwith take all reasonable steps to ensure that the company is dissolved under this Part, and
(b) the company must not carry on any business or activity except for the sole purpose of dissolving the company.

Allowed disbursements

3.B.28(1) If the directors of a provincial company are required under section 3.B.27 to take all reasonable steps to ensure that the company is dissolved, no part of the capital of the company or interest on the capital may be used for the payment of incorporation and organization expenses, other than remuneration and costs referred to in section 3.B.25, unless the payment has been approved by a special resolution.

3.B.28(2) If the amount of a payment approved by a special resolution for the payment of any incorporation and organization expenses is considered insufficient by the directors or if no special resolution for the payment of such expenses is passed, the directors may apply to the Court to settle and determine the amounts to be paid out of the capital of the company and interest on the capital before distribution of the balance to the shareholders or, where there are no shareholders, to the incorporators.

3.B.28(3) The directors must, at least 21 days prior to the date fixed for the hearing of the application referred to in subsection (2), send to the shareholders or incorporators, as the case may be, a notice of the application, which notice must contain a statement of the amounts that are proposed to be settled and determined by the Court.

3.B.28(4) In order that the amounts paid and payable under this section may be equitably borne by the shareholders or incorporators, as the case may be, the directors must, after the amounts of the payments have been approved by special resolution or settled and determined by the Court, fix the proportionate part of the amount of the payment chargeable to each shareholder or incorporator as the ratio of the amount paid in by the shareholder or incorporator to the aggregate of all the amounts paid in by the shareholders or incorporators.

3.B.28(5) After the amounts referred to in this section have been paid, the directors must pay to the shareholders or incorporators the respective balances of the money paid in by them together with any interest earned on that money, less the amount chargeable to each shareholder or incorporator under subsection (4).

Division 3 - Continuance Into The Province

Restriction on continuance

3.B.29 Despite anything in this Part, no insurer formed outside of Canada may be continued as a provincial company under this Act.

Continuance from another jurisdiction

3.B.30 A federally authorized company or an extra-provincial company may be continued as a provincial company if

(a) the company submits an application to the Superintendent,
(b) the continuance of the company is authorized under the Act under which the company is incorporated,
(c) the applicant meets the requirements for incorporation under this Act,
(d) the Superintendent has received evidence showing the proposed continuance has been approved in conformity with the laws of the jurisdiction in which the company was incorporated,
(e) the Superintendent is satisfied that continuance as a provincial company will not adversely affect the policyholders, security holders or creditors of the company, and
(f) the company intends to carry on the classes of insurance in the Province that it was authorized to carry on in the jurisdiction in which it was incorporated.

Certificate of continuance

3.B.31(1) The Minister may, on the recommendation of the Superintendent, issue a certificate of continuance continuing a federally authorized company or an extra-provincial company as a provincial company.

3.B.31(2) The certificate of continuance must set out the name of the company, its financial year and whether the company is a mutual provincial company.

3.B.32 The Minister may set out in the certificate of continuance any term or condition that the Superintendent considers advisable to deal with the particular circumstances of the company.

Effect of certificate of continuance

3.B.33(1) On the date set out in the certificate of continuance continuing a federally authorized company or an extra-provincial company as a provincial company,

(a) the company becomes a provincial company as if it had been incorporated under this Part, and

(b) the certificate of continuance is the instrument of incorporation of the continued company.

3.B.33(2) A certificate of continuance is conclusive proof for the purposes of this Act and for all other purposes

(a) that the provisions of this Act in respect of continuance and all requirements precedent and incidental to continuance have been complied with, and

(b) that the provincial company has been continued under this Act on the date set out in the certificate of continuance.

Notice of continuation

3.B.34(1) The Superintendent must publish a notice of the continuance of a federally authorized company or an extra-provincial company in the *Gazette*.

Idem

3.B.34(2) When a federally authorized company or an extra-provincial company is continued as a provincial company, the Superintendent must forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which the federally authorized company or extra-provincial company was authorized to apply to be continued under this Part.

Effects of continuance

3.B.35 When a federally authorized company or an extra-provincial company (referred to as the "body corporate") is continued as a provincial company under this Division,

(a) the property of the body corporate continues to be the property of the provincial company,

(b) the provincial company continues to be liable for the obligations of the body corporate,

(c) an existing cause of action or claim by or against the body corporate or any liability of the body corporate to prosecution is unaffected,

(d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may continue to be prosecuted by or against the provincial company,

(e) a conviction against or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the provincial company,

(f) a person who, on the day the body corporate becomes a provincial company, was the holder of a security issued by the body corporate is not deprived of any right or privilege available to the person at that time in respect of the security or relieved of any liability in respect of the security, but any such right or privilege may be exercised only in accordance with this Act, and

(g) the bylaws of the body corporate, except those bylaws that are in conflict with this Act, continue as the bylaws of the provincial company

Division 4 - Continuance Out of The Province

Continuance in another jurisdiction

3.B.37(1) Subject to sub-section (5), a provincial company may, if

(a) the proposed continuance is approved by a special resolution of the participating policyholders and shareholders, and

(b) the Superintendent approves the proposed continuance on being satisfied that the continuance will not adversely affect the policyholders, security holders or creditors of the company,

apply to the appropriate official or public body of another jurisdiction requesting that the company be continued in that other jurisdiction as if it had been incorporated under the laws of that other jurisdiction.

3.B.37(2) The directors of the provincial company must submit the proposed continuance to a meeting of the participating policyholders and shareholders for approval.

3.B.37(3) The directors must give notice of the meeting and particulars of the proposed continuance

(a) in accordance with section 3.B.156, and

(b) to the Superintendent at least 21 days before the meeting.

3.B.37(4) A provincial company must advise the Superintendent, in writing, within fourteen days if any resolution approving the continuance out of the Province is passed and in advance of making any application for continuance under any other enactment or to any other government or jurisdiction

Requirements for other jurisdiction's law

3.B.37(5) A provincial company may be continued as a body corporate under the laws of another jurisdiction only if those laws provide in effect that

(a) the property of the provincial company continues to be the property of the body corporate,
(b) the body corporate continues to be liable for the obligations of the provincial company,
(c) an existing cause of action, claim or liability to prosecution is unaffected by the continuance,
(d) a civil, criminal or administrative action or proceeding pending by or against the provincial company may continue to be prosecuted by or against the body corporate, and
(e) a conviction against or ruling, order or judgment in favour of or against the provincial company may be enforced by or against the body corporate.

Abandoning application

3.B.39 The directors of a provincial company may, if authorized by the participating policyholders and shareholders at the time of approving a proposed continuance under this Division, abandon the application for continuance without further approval of the participating policyholders or shareholders.

Certificate of discontinuance

3.B.39(1) On receipt of notice satisfactory to the Superintendent that the provincial company has been continued under the laws of another jurisdiction, the Superintendent must file the notice and issue a certificate of discontinuance, and the continued company is no longer a provincial company.

3.B.39(2) The Superintendent must publish a notice of the certificate of discontinuance in the *Gazette*.

Division 5 - Mutualization

Conversion into mutual provincial company

3.B.40(1) On the application of a provincial company, the Minister may issue a certificate converting the provincial company into a mutual provincial company.

3.B.40(2) The Minister may not issue the certificate unless the requirements of the Regulations have been met.

Regulations

3.B.41 The Minister may make Regulations respecting mutualisation proposals and procedures and requirements that must be met before a provincial company may be converted into a mutual provincial company.

Payment
3.B.42 Despite anything in this Act, a provincial company may, with the approval of the Superintendent, pay for shares purchased or otherwise acquired pursuant to a mutualisation proposal by

(a) making a promissory note that is, or issuing debt securities that are, payable at a fixed or determinable future time not later than 10 years after the date of its making or their issue, or
(b) issuing shares that a mutual provincial company may issue.

Division 6 - Demutualization

Conversion into provincial company with common shares
3.B.43(1) On the application of a mutual provincial company, the Superintendent may issue a certificate converting the mutual provincial company into a provincial company with common shares.

3.B.43(2) The Superintendent may not issue the certificate unless the requirements of the Regulations have been met.

3.B.43(3) On the day that the certificate becomes effective the policyholders of the company cease to have any rights with respect to the company as a mutual provincial company or any interest in the company as a mutual provincial company.

Regulations
3.B.44(1) The Minister may make regulations

(a) respecting demutualization proposals and procedures and requirements that must be met before a mutual provincial company may be converted into a provincial company with common shares;
(b) governing the ownership of shares issued by a mutual provincial company that has been converted into a provincial company with common shares.

3.B.44(2) A Regulation made under this section may provide that the Superintendent may, by order, on such terms and conditions as the Superintendent considers appropriate, exempt a provincial company from prescribed requirements of that Regulation.

3.B.44(3) The Minister may, on such terms and conditions as the Minister considers appropriate, exempt a mutual provincial company from any requirement of this Act or the Regulations if

(a) [14] the company is applying for the approval of a proposal to convert the company into a company with common shares, and

(b) the Superintendent is of the opinion that the company is, or is about to be, in financial difficulty and that the exemption would help to facilitate an improvement in the financial condition of the company.

Division 7 - Change of Name, Financial Year and Terms and Conditions

Certificate changing name or terms and conditions

3.B.45(1) On the application of a provincial company authorized by special resolution, the Minister may issue a certificate

(a) changing the name of the company,

(b) changing the financial year of the company, or

(c) adding, changing or removing any term or condition that is set out in the company's instrument of incorporation.

Proposal to amend

3.B.46(1) Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 3.B.160 and 3.B.161, make a proposal to make an application referred to in section 3.B.45.

3.B.46(2) Notice of a meeting of participating policyholders or shareholders at which a proposal to amend the instrument of incorporation is to be considered must set out the proposal.

Division 8 - Amalgamation

Amalgamation

3.B.47 Two or more provincial companies may amalgamate under this Division to become one provincial company.

Amalgamation agreement

3.B.48(1) The companies proposing to amalgamate must enter into an amalgamation agreement.

3.B.48(2) An amalgamation agreement does not take effect until the Superintendent's approval under section 3.B.49 the participating policyholders' and shareholders' approval under section 3.B.51 have been obtained.

Superintendent's approval

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[14] Legislative drafters :this section shouldn't limit the demutualised company from having preferred shares as well as common

3.B.49(1) Before the amalgamation agreement is submitted for participating policyholder and shareholder approval under section 3.B.51, the agreement must be submitted to the Superintendent for approval, and any participating policyholders' or shareholders' approval under section 3.B.51 is invalid if it is obtained prior to the Superintendent's approval.

3.B.49(2) An amalgamation agreement submitted to the Superintendent for approval must be accompanied by the report of an independent actuary on the agreement.

3.B.49(3) The Superintendent must not approve the amalgamation agreement unless the Superintendent is satisfied that
- (a) the agreement meets the requirements of the Regulations,
- (b) the requirements of the Regulations for amalgamation have been met.

Regulations
3.B.50 The Minister may make Regulations
- (a) respecting the requirements for amalgamation agreements;
- (b) respecting requirements that must be met before companies may be amalgamated under this Division.

Policyholder and shareholder approval
3.B.51(1) In this section,
"company" means a company that is proposing to amalgamate under this Division.

3.B.51(2) The directors of each company must submit an amalgamation agreement for approval to a meeting of the participating policyholders and shareholders of the company of which they are directors and, subject to subsection (4), to the holders of each class or series of shares.

3.B.51(3) Each share of a company carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

3.B.51(4) The holders of shares of a class or series of shares of a company are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the by-laws or instrument of incorporation of the company, would entitle those holders to vote separately as a class or series.

3.B.51(5) Participating policyholders are entitled to vote separately from shareholders in respect of an amalgamation agreement.

3.B.51(6) Subject to subsections (4) and (5), an amalgamation agreement is approved when the participating policyholders and shareholders of each company have approved the amalgamation by special resolution.

3.B.51(7) An amalgamation agreement may provide that, at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of a company even though the agreement has been approved by the participating policyholders or shareholders of all or any of the companies that are proposing to amalgamate.

Joint application to Superintendent

3.B.52(1) Subject to subsection (2), unless an amalgamation agreement is terminated in accordance with section 3.B.51(7), companies that are proposing to amalgamate must, within 3 months after the Superintendent approves their amalgamation agreement, jointly apply to the Superintendent for a certificate of amalgamation continuing the companies as one provincial company.

3.B.52(2) No application for the issue of a certificate of amalgamation may be made unless

(a) notice of intention to make such an application has been published in the *Gazette* and in a newspaper in general circulation in the place where the head office of each applicant is located, and

(b) the application is supported by satisfactory evidence that the applicants have complied with the requirements of this Division and the Regulations relating to amalgamation.

Certificate of amalgamation

3.B.53(1) Where an application has been made to the Superintendent in accordance with section 3.B.52, the Lieutenant Governor in Council may issue a certificate of amalgamation continuing the applicants as one provincial company.

3.B.53(2) Section 3.B.16 applies with such modifications as the circumstances require when a certificate of amalgamation is issued pursuant to this section.

3.B.53(3) The Superintendent must publish notice of the issuance of the certificate of amalgamation in the *Gazette.*

Effect of certificate

3.B.54(1) On the day provided for in the certificate of amalgamation issued under section 3.B.53,

(a) the amalgamation of the applicants and their continuance as one provincial company becomes effective;

(b) the property of each applicant is the property of the amalgamated company;

(c) the amalgamated company is liable for the obligations of each applicant;
(d) any existing cause of action, claim or liability to prosecution is unaffected;
(e) any civil, criminal or administrative action or proceeding pending by or against an applicant may be prosecuted by or against the amalgamated company;
(f) any conviction against or ruling, order or judgment in favour of or against, an applicant may be enforced by or against the amalgamated company;
(g) if any director or officer of an applicant continues as a director or officer of the amalgamated company, any disclosure by that director or officer of a material interest in any contract made to the applicant is deemed to be disclosure to the amalgamated company;
(h) the certificate of amalgamation is the instrument of incorporation of the amalgamated company.

3.B.54(2) Any deemed disclosure under subsection (1)(g) must be recorded in the minutes of the first meeting of directors of the amalgamated company.

Division 9 - Transfer of Business and Fundamental Reinsurance

Interpretation

3.B.63(1) In this Division, "Division 9 agreement" means an agreement in which an insurer
(a) fundamentally reinsures any of its contracts of insurance,
(b) fundamentally reinsures any of the contracts of insurance of any other insurer, or
(c) sells all or substantially all of its assets.

3.B.63(2) In this Division, a contract of insurance is fundamentally reinsured if
(a) the insurer under the contract transfers or assigns all rights and obligations under the contract to another insurer, or
(b) the contract is replaced by novation and the insurer under the replacement contract is different from the insurer under the original contract.

Notice of intention

3.B.64(1) Before a provincial company enters into a Division 9 agreement, the company must publish a notice of intention to enter into the agreement
(a) in the Gazette, and
(b) in a newspaper in general circulation in the place where the head office of the provincial company is located,

stating the day on or after which the application will be made to the Superintendent to approve the agreement, that day being at least 30 days after the date of publication of the notice.

3.B.64(2) Where a provincial company publishes a notice referred to in subsection (1), the Superintendent may direct the company to provide its policyholders and shareholders with the information the Superintendent may specify.

3.B.64(3) Where a provincial company publishes a notice referred to in subsection (1), the company must make the proposed agreement to which the notice relates available for the inspection of the policyholders and shareholders of the company at the head office of the company for a period of at least 30 days after the publication of the notice and provide a copy of the agreement to any policyholder or shareholder on request in writing to the head office of the company.

3.B.64(4) Where the Superintendent is of the opinion that it is in the best interests of a group of policyholders affected by an agreement, the Superintendent may shorten the periods of 30 days referred to in subsections (1) and (3).

3.B.64(5) The Superintendent may designate a professional adviser to evaluate the agreement, and the provincial company that is proposing to enter into the agreement must provide any assistance required by the professional adviser to enable the adviser to complete the evaluation.

3.B.64(6) The remuneration and expenses of the professional adviser in carrying out the evaluation under subsection (5) are payable by the provincial company on being approved in writing by the Superintendent.

Participating policyholder and shareholder approval

3.B.65(1) A provincial company proposing to make a Division 9 agreement must submit the proposed agreement for approval at a meeting of the participating policyholders and shareholders and, subject to subsection (3), to the holders of each class or series of shares.

3.B.65(2) Each share of the provincial company carries the right to vote in respect of a proposed agreement whether or not the share otherwise carries the right to vote.

3.B.65(3) The holders of shares of a class or series of shares of a provincial company are entitled to vote separately as a class or series in respect of a proposed agreement submitted under subsection (1) if the shares of the class or series are affected by the agreement in a manner different from the shares of another class or series.

3.B.65(4) Participating policyholders are entitled to vote separately from shareholders in respect of an agreement.

3.B.65(5) For the purpose of subsection (1), and subject to subsections (3) and (4), an agreement is approved when the participating policyholders and shareholders have approved the agreement by special resolution.

Abandoning agreement
3.B.66 Where a special resolution approving a Division 9 agreement under section 3.B.65(5) so states, the directors of a provincial company may, subject to the rights of third parties, abandon the agreement without further approval of the participating policyholders and shareholders.

Application to Superintendent
3.B.67(1) Unless a Division 9 agreement is abandoned in accordance with section 3.B.77, a provincial company referred to in section 3.B.65(1) must, within sixty days after the agreement has been approved in accordance with section 3..B.65(5), apply to the Superintendent for approval of the agreement.

3.B.67(2) A Division 9 agreement in which a provincial company is a party has no force or effect until it has been approved by the Superintendent.

3.B.67(3) The Superintendent must not approve a Division 9 agreement if the reinsuring or purchase or sale of assets would cause any provincial company that would be a party to the agreement to be in contravention of the capital adequacy or liquidity requirements of this Act and Regulations.

Federal and extra-provincial companies
3.B.68(1) A licensed federally authorized company or extra-provincial company that enters into a Division 9 agreement to fundamentally reinsure any of its contracts of insurance that are made in the Province with another licensed federally authorized company or extra-provincial company must provide a copy of the agreement to the Superintendent.

3.B.68(2) The Division 9 agreement referred to in subsection (1) does not affect contracts of insurance that are made in The Province until the Division 10 agreement has been approved by the Superintendent.

3.B.68(3) If the Superintendent approves the Division 9 agreement referred to in subsection (1), the Superintendent may require the licensed federal or extra-provincial company that is fundamentally reinsuring the contracts of insurance made in the Province to notify, in a form and manner satisfactory to the Superintendent, the policyholders under those contracts.

Division 10 - Dissolution and Revival

Application

3.B.69 This Division does not apply to a mutual provincial company.

Insolvent provincial companies

3.B.70(1) This Division does not apply to a provincial company that is insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

3.B.70(2) Any proceedings taken under this Division to dissolve or to liquidate and dissolve a provincial company must be stayed if the company is at any time found to be insolvent within the meaning of that term in the *Winding-up and Restructuring Act* (Canada).

Returns to Superintendent

3.B.71 A liquidator appointed under this Division to wind up the business of a provincial company must provide the Superintendent with such information relating to the business and affairs of the company in such form as the Superintendent requires.

SIMPLE DISSOLUTION

No property and no Liabilities

3.B.72(1) A provincial company that has no property and no liabilities may, if authorized by a special resolution of the shareholders or, if there are no shareholders, by a resolution of all the directors, apply to the Superintendent for a certificate dissolving the company.

3.B.72(2) The Superintendent may require a provincial company that has applied for a certificate of dissolution to publish a notice of the application in the Gazette that contains any information that the Superintendent specifies.

3.B.72(3) Where the Superintendent has received an application under subsection (1) and is satisfied that all the circumstances so warrant, the Minister may issue a certificate of dissolution that dissolves the provincial company.

3.B.72(4) A provincial company is dissolved and ceases to exist on the day stated in the certificate of dissolution.

Property and liabilities

3.B.73(1) The voluntary liquidation and dissolution of a provincial company that has property or has property and liabilities

(a) may be proposed by its directors, or

(b) may be initiated by way of a proposal made by a shareholder who is entitled to vote at an annual meeting of shareholders in accordance with sections 3.B.158 and 3.B.159.

3.B.73(2) A notice of any meeting of shareholders at which the voluntary liquidation and dissolution of a provincial company is to be proposed must set out the terms of the proposal.

Application
3.B.74 Where the voluntary liquidation and dissolution of a provincial company is proposed under section 3.B.73, the company may apply to the Superintendent for a certificate dissolving the company if authorized by a special resolution of the shareholders or, where the company has issued more than one class of shares, by special resolution of each class of shareholders whether or not those shareholders are otherwise entitled to vote.

Approval of Superintendent required
3.B.75(1) No action directed toward the voluntary liquidation and dissolution of a provincial company under section 3.B.73 may be taken by a company until an application made by the company in accordance with section 3.B.74 has been approved by the Superintendent.

3.B.75(2) The Superintendent may approve an application made pursuant to section 3.B.74 where the Superintendent is satisfied on the basis of the application that

(a) the circumstances warrant the voluntary liquidation and dissolution of a provincial company, and

(b) the company, in accordance with the provisions of Division 10,

  (i) has transferred or will be transferring all or substantially all of its policies, or

  (ii) has reinsured or will be reinsuring itself against all or substantially all of the risks undertaken by it.

3.B.75(3) Where the Superintendent has approved an application under section 3.B.74 with respect to a provincial company, the company must not carry on business except to the extent necessary to complete its voluntary liquidation.

3.B.75(4) Where the Superintendent has approved an application under section 3.B.74 with respect to a provincial company, the company must

(a) cause notice of the approval to be sent to each known claimant against and creditor of the company, except policyholders,

(b) publish notice of the approval in the Gazette and in a newspaper having general circulation in the place where the head office of the company is located and take reasonable steps to give notice of the approval of the application in each province in which the company transacted any business within the preceding 12 months,

(c) proceed to collect its property, dispose of property that is not to be distributed in kind to its shareholders, discharge or provide for all its obligations and do all other acts required to liquidate its business,

(d) transfer its remaining policies, or reinsures itself against the remaining risks undertaken by it, and

(e) after giving the notice required under clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Certificate of dissolution

3.B.76(1) Unless the Court has made an order in accordance with section 3.B.77, 3.B.78, or 3.B.79, the Lieutenant Governor in Council may, if satisfied that the provincial company has complied with section 3.B.75(4) and that all the circumstances so warrant, issue a certificate of dissolution that dissolves the company.

3.B.76(2) A provincial company is dissolved and ceases to exist on the day stated in the certificate of dissolution.

COURT SUPERVISED LIQUIDATION

Court supervision - voluntary liquidation

3.B.77(1) The Superintendent or any interested person may, at any time during the voluntary liquidation of a provincial company, apply to the Court for an order directing that the company be wound up subject to the supervision of the Court in accordance with this section and sections 3.B.80 to 3.B.91, and on such application the Court may so order and make any further order it thinks fit.

3.B.77(2) An application under subsection (1) to the Court for supervision of a voluntary liquidation must state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation.

3.B.77(3) Where a person other than the Superintendent makes an application under subsection (1), the person must give the Superintendent notice of the application, and the Superintendent may appear and be heard in person or by counsel at the hearing of the application.

Court supervision - involuntary liquidation

3.B.78(1) The Superintendent or any interested person may, for the reasons referred to in subsection (2), apply to the Court for an order directing that a provincial company be wound up subject to the supervision of the Court in accordance with this section and sections 3.B.80 to 3.B.91.

3.B.78(2) The Court may so order and make any further order it sees fit if the Court is satisfied that

(a) the company has failed to exercise its corporate powers for any continuous period of one year,
(b) the company has not commenced business or gone into actual operation within one year after it was incorporated,
(c) the company has discontinued business for one year after it has undertaken insurance contracts within the meaning of this Act,
(d) the company's licence has been suspended for one year or more,
(e) the company has contravened this Act or the Regulations and it is in the public interest that the company be wound up, or
(f) other sufficient cause has been shown.

Application by provisional liquidator
3.B.79(1) A provisional liquidator of a provincial company appointed under section 3.A.2 must apply to the Court for an order directing that the provincial company be wound up subject to the supervision of the Court in accordance with this section and sections 3.B.80 to 3.B.91 and for an order appointing a permanent liquidator.

3.B.79(2) The Court may so order and make any further order it sees fit.

Effect of Court supervision
3.B.80(1) When the Court makes an order under section 3.B.77, 3.B.78, 3.B.79, the liquidation of the provincial company is subject to the supervision of the Court.

3.B.80(2) The supervision of the liquidation of a provincial company by the Court pursuant to an order made under section 3.B.77, 3.B.78, 3.B.79 commences on the day the order is made.

Powers of Court
3.B.81(1) In connection with the liquidation and dissolution of a provincial company, the Court may, where it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations and to make satisfactory arrangements for the protection of its policyholders, make any order it thinks fit, including, without limiting the generality of the foregoing,

(a) an order to liquidate;
(b) an order appointing a liquidator, with or without security, fixing a liquidator's remuneration and replacing a liquidator;
(c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
(d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
(e) an order determining the validity of any claims made against the company;

(f) an order, at any stage of the proceedings, restraining the directors and officers of the company from
  (i) exercising any of their powers, or
  (ii) collecting or receiving any debt or other property of the company, and from paying out or transferring any property of the company, except as permitted by the Court;
(g) an order determining and enforcing the duty or liability of any present or former director, officer, policyholder or shareholder
  (i) to the company, or
  (ii) for an obligation of the company;
(h) an order approving the payment, satisfaction or compromise of claims against the company and the retention of assets for that purpose, and determining the adequacy of provisions for the payment, discharge or transfer of any obligation of the company, whether liquidated, unliquidated, future or contingent;
(i) with the concurrence of the Superintendent, an order providing for the disposal or destruction of the documents, records or registers of the company;
(j) on the application of a creditor, an inspector or the liquidator, an order giving directions on any matter arising in the liquidation;
(k) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default on such terms as the Court thinks fit and confirming any act of the liquidator;
(l) subject to sections 3.B.87, 3.B.88 and 3.B.90, an order approving any proposed, interim or final distribution to shareholders, if any, or incorporators, in money or in property;
(m) an order disposing of any property belonging to creditors, policyholders, shareholders and incorporators who cannot be found;
(n) on the application of any director, officer, policyholder, shareholder, incorporator, creditor or the liquidator,
  (i) an order staying the liquidation proceedings on such terms and conditions as the Court thinks fit,
  (ii) an order continuing or discontinuing the liquidation proceedings, or
  (iii) an order to the liquidator to restore to the company all of its remaining property;
(o) after the liquidator has rendered the liquidators' final account to the Court, an order directing the company to apply to the Superintendent for a certificate dissolving the company.

3.B.81(2) The Court may appoint any person as liquidator including a director, an officer or a shareholder of the provincial company being liquidated or of any other provincial company.

Cessation of business and powers

3.B.82(1) Where the Court makes an order for the liquidation of a provincial company,

(a) the company continues in existence but must cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation;
(b) the powers of the directors and shareholders, if any, cease to be vested in the directors and shareholders and are vested in the liquidator, except as specifically authorized by the Court.

3.B.82(2) A liquidator may delegate any of the powers vested by subsection (1)(b) to the directors, officers or shareholders, if any.

Vacancy in liquidator's office

3.B.83 Where an order for the liquidation of a provincial company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the Court until the office of liquidator is filled.

Duties and powers of liquidator

3.B.84(1) A liquidator must
(a) forthwith after being appointed give notice of the appointment to the Superintendent and to each claimant and creditor of the provincial company known to the liquidator,
(b) forthwith after being appointed publish notice in the Gazette and once a week for two consecutive weeks in a newspaper in general circulation in the place where the head office of the provincial company is located, and take reasonable steps to give notice in each province where the company transacted business within the preceding 12 months that
  (i) any person indebted to the company is required to render an account and to pay any amount owing to the liquidator at the time and place specified in the notice,
  (ii) any person possessing property of the company is required to deliver it to the liquidator at the time and place specified in the notice, and
  (iii) any person having a claim against the company, whether liquidated, unliquidated, future or contingent, other than a policyholder having an unliquidated claim, is required to present written particulars of the claim to the liquidator not later than 60 days after the publication of the notice in the Gazette,
(c) take the property of the company into custody and control,
(d) transfer the remaining policies of the company, or reinsure the remaining risks undertaken by the company in accordance with Division 10,
(e) open and maintain a trust account for the money of the company received by the liquidator,
(f) keep accounts of the money of the company received and paid out by the liquidator,
(g) maintain separate lists of each class of creditors, shareholders, policyholders and other persons having claims against the company,

(h) if at any time the liquidator determines that the company is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions,
(i) deliver to the Court and to the Superintendent, at least once in every 12-month period after the liquidator's appointment or more often, as the Court requires, the annual return of the company prepared in accordance with sections 2.28 and 2.30 or prepared in such manner as the liquidator thinks proper or as the Court requires, and
(j) after the final accounts are approved by the Court, distribute any remaining property of the company among the shareholders, if any, or incorporators, according to their respective rights.

3.B.84(2) A liquidator may in respect of a liquidation of a provincial company
(a) retain professional advisers,
(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the company,
(c) carry on the business of the company as required for an orderly liquidation,
(d) sell any property of the company by public auction or private sale,
(e) do all acts and execute documents in the name and on behalf of the company,
(f) with the prior approval of the Court, borrow money on the security of the property of the company,
(g) settle or compromise any claims by or against the company, and
(h) do all other things necessary for the liquidation of the company and distribution of its property.

3.B.84(3) A liquidator must not purchase, directly or indirectly, any part of the property of the provincial company without the prior approval of the Court.

Reliance on statements
3.B.85 A liquidator is not liable if the liquidator relies in good faith on
(a) financial statements of the provincial company represented to the liquidator by an officer of the company, or in a written report of the auditor of the company, as reflecting the financial condition of the company fairly, or
(b) an opinion, a report or a statement of a professional adviser retained by the liquidator.

Examination of others
3.B.86(1) Where a liquidator has reason to believe that any property of the provincial company is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

3.B.86(2) Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the provincial company, the Court may order that person to restore the property or pay compensation to the liquidator.

Costs of liquidation
3.B.87 A liquidator must pay the costs of liquidation out of the property of the provincial company and must pay or make adequate provision for all claims against the company.

Final accounts
3.B.88(1) Within one year after the appointment of a liquidator and after paying or making adequate provision for all claims against the provincial company, the liquidator must apply to the Court

(a) for approval of the final accounts of the liquidator and for an order permitting the distribution, in money or in kind, of the remaining property of the company to its shareholders, if any, or to the incorporators, according to their respective rights, or

(b) for an extension of time.

3.B.88(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the provincial company or, if there are no shareholders of the company, an incorporator may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

3.B.88(3) A liquidator must give notice of the liquidator's intention to make an application under subsection (1) to the Superintendent, to each inspector and referee appointed under section 3.B.81, to each shareholder of the provincial company or, if there are no shareholders, to each incorporator and to any person who provided a financial guarantee for the liquidation.

3.B.88(4) The liquidator must publish the notice required under subsection (3) in the Gazette and once a week for two consecutive weeks in one or more newspapers in general circulation in each province in which the provincial company has transacted business within the preceding 12 months or as otherwise directed by the Court.

Right to distribution of money
3.B.89(1) If in the course of the liquidation of a provincial company the shareholders resolve, or the liquidator proposes,

(a) to exchange all or substantially all of the remaining property of the company for securities of another body corporate that are to be distributed to the shareholders or to the incorporators, or

(b) to distribute all or part of the remaining property of the company to the shareholders or to the incorporators in kind, a shareholder or incorporator may apply to the Court for an order requiring the distribution of the remaining property of the company to be in money.

3.B.89(2) On an application under subsection (1), the Court may determine whether any shareholder or incorporator of the provincial company is opposed to the resolution or proposal and, if so, join that shareholder or incorporator as a party and may order

(a) all of the remaining property of the company to be converted into and distributed in money, or

(b) the claim of any shareholder or incorporator applying under this section to be satisfied by a distribution in money.

3.B.89(3) Where an order is made by the Court under subsection (2)(b), the Court

(a) must fix a fair value on the share of the property of the provincial company attributable to the shareholder or incorporator,

(b) may in its discretion appoint one or more appraisers to assist the Court in fixing a fair value in accordance with clause (a),

(c) must render a final order against the provincial company in favour of the shareholder or incorporator for the amount of the share of the property of the provincial company attributable to the shareholder or incorporator, and

(d) must fix the time within which the liquidator must pay the amount referred to in clause (c) to a shareholder or incorporator and, in the case of a shareholder, payment of the amount referred to in clause (c) may only occur after delivery of the shareholder's shares to the liquidator.

Final order

3.B.90(1) If the Court approves the final accounts rendered by a liquidator in respect of a provincial company, the Court must make an order

(a) directing the custody or disposal of the documents, records and registers of the company, and

(b) discharging the liquidator except in respect of the duty of a liquidator under subsection (2).

3.B.90(2) The liquidator must forthwith send a certified copy of the order referred to in subsection (1) to the Superintendent.

Certificate of dissolution

3.B.91(1) After the Superintendent receives the order under section 3.B.90, the Lieutenant Governor in Council may issue a certificate of dissolution that dissolves the provincial company.

3.B.91(2) A provincial company is dissolved and ceases to exist on the day stated in the certificate of dissolution.

GENERAL

Continuation of actions

3.B.92(1) Despite the dissolution of a provincial company under this Division,

(a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved,

(b) a civil, criminal or administrative action or proceeding may be brought against the company within two years after its dissolution as if the company had not been dissolved, and

(c) any property that would have been available to satisfy any judgment or order if the company had not been dissolved remains available for that purpose.

3.B.92(2) Service of a document on a provincial company after its dissolution may be effected by serving the document on a person shown as a director in the most recent notice of directors filed under this Act.

Definition

3.B.93 In sections 3.B.94 and 3.B.95, “shareholder” and “incorporator” include the heirs and personal representatives of a shareholder or incorporator.

Limitations on liability

3.B.94(1) Despite the dissolution of a provincial company, a shareholder or incorporator to whom any of its property has been distributed is liable to any person claiming under section 3.B.92(1) to the extent of the amount received by that shareholder or incorporator on the distribution.

3.B.94(2) An action to enforce liability under subsection (1) may not be commenced except within one years after the date of the dissolution of the provincial company.

3.B.94(3) The Court may order an action referred to in subsections (1) and (2) to be brought against the persons who were shareholders or incorporators as a class, subject to such conditions as the Court thinks fit.

3.B.94(4) If the plaintiff establishes a claim in an action under subsection (3), the Court may refer the proceedings to a referee or other officer of the Court, who may

(a) add as a party to the proceedings each person found by the plaintiff to have been a shareholder or incorporator,

(b) determine, subject to subsection (1), the amount that each person who was a shareholder or incorporator must contribute towards satisfaction of the plaintiff's claim, and

(c) direct payment of the amounts so determined.

Where creditor cannot be found

3.B.95(1) On the dissolution of a provincial company under this Division, the portion of the property distributable to a creditor, shareholder, incorporator or other claimant who cannot be found must be converted into money and paid to the Minister of Finance, who must hold the money in trust for those entitled to it.

3.B.95(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor, shareholder, incorporator or claimant.

3.B.95(3) If at any time a person establishes entitlement to any money paid to the Minister of Finance under subsection (1), the Minister of Finance must pay an equivalent amount to that person out of the money held in trust.

3.B.95(4) No interest is payable on money paid to a claimant under subsection (3).

Custody of records after dissolution

3.B.96 A person who has been granted custody of the documents, records and registers of a dissolved provincial company must keep them available for production for 6 years following the date of the dissolution of the company or until the expiration of such shorter period as may be ordered by the Court under section 3.B.90.

REVIVAL

Revival

3.B.97(1) Any interested person may apply to the Superintendent to revive, for a specified period, a dissolved provincial company, other than one dissolved pursuant to an order of the Court.

3.B.97(2) On receipt of the application, the Superintendent may
  (a) issue a certificate of revival that revives the provincial company for a specified period, subject to any terms or conditions that the Superintendent considers appropriate, or
  (b) direct that the application be made to the Court under subsection (3).

3.B.97(3) Any interested person may apply to the Court for an order to revive, for a specified period, a dissolved provincial company
  (a) where the company was dissolved pursuant to an order of the Court, or
  (b) where the Superintendent makes a direction under subsection (2)(b),
and the applicant must give notice of the application to the Superintendent.

3.B.97(4) The Court may order that the provincial company be revived for a specified period and that the revival is subject to any terms or conditions that it considers appropriate.

3.B.97(5) If an order is made under subsection (4), the applicant must forthwith send a certified copy of it to the Superintendent, and the Superintendent must issue a certificate of revival that revives the company for the period specified in the order and that sets out any terms or conditions specified in the order.

3.B.97(6) On the application of an interested party, the Superintendent, in the case of a certificate of revival issued under subsection (2), or the Court, in the case of a certificate of revival issued under subsection (5), may extend the period of time for which a provincial company is revived, and the certificate of revival must be amended to show the extended period.

3.B.97(7) A provincial company is revived on the date shown in the certificate of revival, and subject to any order under this section and to rights acquired by any person prior to the revival, the company is deemed to have continued in existence as if it had not been dissolved.

3.B.97(8) A provincial company that is revived under this section is dissolved on the expiry of the period specified in its certificate of revival.

Division 11 - General

Names

3.B.98(1) Subject to the Regulations, no provincial company may have a name
(a) that is prohibited by the Regulations or contains a word, expression or symbol that is prohibited by the Regulations,
(b) that is identical to the name of
  (i) a body corporate, whether in existence or not, incorporated under the laws of the Province ,
  (ii) an extra-provincial body corporate registered in the Province, or
  (iii) a body corporate incorporated by or under an Act of the Parliament of Canada,
(c) that is similar to the name of
  (i) a body corporate incorporated under the laws of the Province,
  (ii) an extra-provincial body corporate registered in the Province, or
  (iii) a body corporate incorporated by or under an Act of the Parliament of Canada, if the use of that name is confusing or misleading, or
(d) that does not meet the prescribed requirements.

3.B.98(2) Subject to this Act and the Regulations, a provincial company may have a name in an English form, a French form, an English form and a French form or a combined English and French form, and it may be legally designated by any such name.

3.B.98(3) Where, through inadvertence or otherwise, a provincial company obtains a name that does not comply with this section, the Superintendent may issue a certificate changing the name of the company.

3.B.98(4) The Superintendent must publish a notice of a change of name made under subsection (3) in the Gazette.

Use of "insurance" in names

3.B.99 No entity incorporated or formed by or under an enactment of the Province, other than a provincial company, may use the words "insurance company" or "insurance corporation" or the French equivalent of those words in its name.

Rights preserved

3.B.100 No amendment to the incorporating instrument or by-laws of a provincial company affects an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers, or any civil, criminal or administrative action or proceeding to which the company or any of its directors or officers is a party.

Effective date of certificates

3.B.101 A certificate issued under this Subpart may be stated to be effective up to one year before the certificate is issued.

HEAD OFFICE, RECORDS AND FINANCIAL STATEMENTS

Head office

3.B.102(1) Every provincial company must have a head office in the Province .

3.B.102(2) A provincial company that changes the address of its head office must, before the change occurs, notify the Superintendent in writing of the date of the change and of the new address.

Records

3.B.103(1) Subject to the Regulations, every provincial company must keep a copy of the following records at its head office:

(a) its instrument of incorporation and by-laws;
(b) the particulars of any terms or conditions imposed on its licence;
(c) the particulars of exceptions granted by the Superintendent that are applicable to the company;

(d) the minutes of meetings and resolutions of participating policyholders or shareholders;
(e) the name, address and date of appointment of the auditor;
(f) the directors register containing
  (i) the name, residence and citizenship of all persons who are or have been directors, with the date on which each became a director, the terms of the appointments and the dates on which they ceased to be directors, and distinguishing, in the case of a life company, between policyholders' directors and shareholders' directors,
  (ii) the bodies corporate of which each director is an officer or director and the firms of which each director is a member,
  (iii) the names of the directors who are also officers or employees of the company or any of its affiliates and the positions they occupy in the company or affiliates, and
  (iv) the name of each committee on which each director serves;
(g) a central securities register set up and maintained in accordance with the *Business Corporations Act;*
(h) a copy of the current financial statements of the company and each of its subsidiaries;
(i) a copy of the investment committee procedures and policies;
(j) minutes of meetings and resolutions of the directors and any committee of the directors;
(k) adequate accounting records
  (i) that will enable the Superintendent to determine the company's financial position and whether it is in compliance with this Act and the Regulations,
  (ii) that set out the company's investments,
  (iii) with accounts, in the form and manner determined by the Superintendent, in respect of participating policies that are separate from accounts maintained in respect of other policies, and
  (iv) for each customer of or claimant under a policy issued by it, that set out the amount owing to it and the nature of its liabilities to the customer or claimant.

3.B.103(2) Every provincial company must keep at its head office any information or data relating to the preparation and maintenance of the records referred to in subsection (1).

3.B.103(3) The Superintendent may, subject to such terms and conditions as the Superintendent considers appropriate, exempt a provincial company from keeping all or any of the records referred to in subsection (1) in the Province .

3.B.103(4) The Superintendent may establish the manner in which the records referred to in subsection (1) are to be retained by a provincial company and the length of time those records are to be retained.

Filing of changes in bylaws, etc.
3.B.104 In the event of a change at any time being made in the insurer's Act or other instrument of incorporation or organization and of its constitution, including bylaws, rules and regulations, or its head office or chief agency or in its chief agent, the insurer shall, within ten days, notify the Superintendent thereof and file with the Superintendent such further certified copies, notices or powers of attorney as are necessary to evidence such change.

Access to records
3.B.105(1) Every provincial company must ensure that
(a) its records referred to in section 3.B.103(1)(a) to (i) are accessible to participating policyholders, shareholders and creditors of the company and their agents during normal business hours, and
(b) the participating policyholders, shareholders and creditors and their agents may examine those records, free of charge, or have copies made of the records on payment of a reasonable fee.

3.B.105(2) Records of a provincial company referred to in section 3.B.103 must at all reasonable times be open to inspection by the directors and their agents.

Standards of financial reporting
3.B.106 Where a provincial company provides its or its subsidiaries' audited financial statements to the Superintendent, policyholders, shareholders or the public, the company must ensure that the statements are prepared in accordance with the following:
(a) generally accepted accounting principles, including the accounting recommendations of the Canadian Institute of Chartered Accountants set out in the Handbook published by that Institute as amended from time to time;
(b) generally accepted auditing standards, including the auditing recommendations of the Canadian Institute of Chartered Accountants set out in the Handbook published by that Institute as amended from time to time;
(c) generally accepted actuarial practices described in the Standards of Practice of the Canadian Institute of Actuaries, as amended from time to time;
(d) any modification of those principles, standards or practices established by the Superintendent or any additional requirements, principles, standards or practices established by the Superintendent.

3.B.107 The *Regulations Act* does not apply to the modifications or additional requirements, principles, standards or practices established under section 3.B.106(d).

Approval of annual financial statements

3.B.108(1) No provincial company may publish, issue or circulate copies of its annual financial statement unless the statement is
- (a) approved by the directors of the company,
- (b) signed in accordance with subsections (2) and (3), and
- (c) accompanied by the report of its auditor.

3.B.108(2) The approval of the directors must be evidenced by the signature of
- (a) the chief executive officer or, in the event of that officer's absence or inability to act, any other officer authorized by the directors to sign in place of the chief executive officer, and
- (b) one director if the signature required by clause (a) is that of a director, or 2 directors if the signature required by clause (a) is that of an officer who is not a director.

3.B.108(3) One of the directors referred to in subsection (2)(b) must be a member of the company's audit committee.

Distribution of financial statements

3.B.109 Every provincial company must send a copy of its annual audited financial statements to its participating policyholders and shareholders not later than 21 days before each annual meeting of participating policyholders and shareholders of the company.

List of shareholders

3.B.110(1) In this section, "basic list of shareholders" of a provincial company means a list of the names of, the number and type of shares owned by, and the address of, each shareholder and any known holder of an option or right to acquire shares of the company, as shown in the records of the company.

3.B.110(2) Every shareholder or participating policyholder of a provincial company or their agents are entitled to a basic list of shareholders of the company.

3.B.110(3) On the request of a person who is entitled to receive a basic list of shareholders, the provincial company must furnish a basic list of shareholders to that person within 10 days after the company receives a statutory declaration referred to in subsection (9) and payment of a reasonable fee.

3.B.110(4) The basic list of shareholders must be made up to a date not more than 10 days before the date of receipt of the statutory declaration.

3.B.110(5) A person requesting a basic list of shareholders from a provincial company may also request in the statutory declaration that the company provide a supplemental list of shareholders.

3.B.110(6) On receiving a request for a supplemental list and payment of a reasonable fee, the provincial company must furnish a supplemental list setting out any changes from the basic list of shareholders for each business day from the date that the basic list is completed, to the date that the supplemental list is completed.

3.B.110(7) If the statutory declaration requests that the supplemental list be made up to the date the basic list is provided, the supplemental list must be furnished within 10 days following the date that the basic list is provided.

3.B.110(8) If the statutory declaration requests that the supplemental list be made up to a specified date after the basic list is provided, the supplemental list must be furnished within 10 days following the specified date.

3.B.110(9) A statutory declaration must state
(a) the name and address for service of the applicant,
(b) whether a supplemental list is required and the date to which the supplemental list is to be made, and
(c) that the basic list of shareholders and any supplemental list obtained under this section will not be used except as permitted under section 3.B.111.

3.B.110(10) If the applicant is an entity, the statutory declaration must be made by a director or officer of the entity or a person acting in a similar capacity.

Use of list

3.B.111 A person who receives a basic list of shareholders or a supplemental list of shareholders under section 3.B.110 may use the list only in connection with
(a) an effort to influence the voting of the shareholders of the provincial company,
(b) an offer to acquire shares of the provincial company, or
(c) any other matter relating to the affairs of the provincial company.

Dealing in lists

3.B.112 No person may sell or purchase, offer for sale or purchase or otherwise traffic in
(a) a basic list of shareholders or a supplemental list of shareholders referred to in section 3.B.110, or
(b) a list of holders of securities of a provincial company.

Information to be given to Superintendent by provincial companies

3.B.113 Every provincial company must provide to the Superintendent
(a) a copy of any application and supporting documents it makes to be licensed in a jurisdiction other than in the Province within 7 days of making the application and a copy of the approval or refusal of the application within 7 days of the receipt of the approval or refusal;

(b) a copy of an order or direction by a court or person in a jurisdiction other than the Province in which the company is licensed that affects the status of the company in the jurisdiction or that requires the company to undergo special examinations or to do something or to refrain from doing something.

Records as evidence
3.B.114 Every record that a provincial company is, by this Act, required to keep or maintain is, in any suit or proceeding, as against the provincial company or against a shareholder, prima facie proof of all facts purporting to be stated in the record.

Certificate of company as evidence
3.B.115(1) A certificate issued on behalf of a provincial company stating any fact that is set out in the by-laws, in the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

3.B.115(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,
(a) a fact stated in a certificate referred to in subsection (1),
(b) a certified extract from a securities register of a provincial company, or
(c) a certified copy of minutes or of an extract from minutes of a meeting of directors, a committee of directors or the shareholders of a provincial company,
is prima facie proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

3.B.115(3) An entry in a securities register of, or a security certificate issued by, a provincial company is prima facie proof that the person in whose name the security is registered is the owner of the securities described in the register or in the certificate.

Notices to policyholders, shareholders, directors
3.B.116(1) A notice or document required by this Act, the Regulations or the by-laws of a provincial company to be given or sent to a policyholder, shareholder or director of a provincial company may be delivered personally to the policyholder, shareholder or director or sent by mail addressed to
(a) the policyholder at the policyholder's latest address as shown in the records of the company,
(b) the shareholder at the shareholder's latest address as shown in the records of the company or its transfer agent, or
(c) the director at the director's latest address as shown in the records of the company or of the Superintendent.

3.B.116(2) A notice or document sent by mail in accordance with subsection (1) to a policyholder, shareholder or director is deemed to be received by the policyholder, shareholder or director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the policyholder, shareholder or director did not receive the notice or document at the time or at all.

3.B.116(3) If a provincial company sends a notice or document to a policyholder or shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the policyholder or shareholder cannot be found, the company is not required to send any further notices or documents to the policyholder or shareholder until the policyholder or shareholder informs the company in writing of the policyholder's or shareholder's new address.

3.B.116(4) If there is a conflict between subsections (1) to (3) and a statutory condition contained in a policy, the statutory condition prevails.

CAPITAL STRUCTURE

Definition

3.B.117 In this Subpart,
"security" means,
(a) in relation to a body corporate, a share of any class or series of shares or a debt obligation of a the body corporate, and includes a warrant or the body corporate and a certificate evidencing such a share or debt obligation but does not include a deposit with a financial institution or any instrument evidencing such a deposit, and
(b) in relation to any other entity, any ownership interest in or debt obligation of the entity, but does not include a policy.

REQUIREMENTS FOR SHARES

Non-par-value shares

3.B.119 Shares of a provincial company must be in registered form and must be without nominal or par value.

Classes of shares

3.B.120(1) A provincial company, other than a mutual provincial company, must have a class of shares designated as common shares.

3.B.120(2) The rights of the holders of common shares are equal in all respects and include

(a) the right to vote at all meetings of shareholders except where only holders of a specified class of shares, or participating policyholders, are entitled to vote,

(b) the right to receive dividends of the provincial company if declared on those shares, and
(c) the right to receive the remaining property of the provincial company on dissolution.

3.B.120(3) No provincial company may designate more than one class of its shares as common shares or confer all of the characteristics of a common share described in subsection (2) on more than one class of shares.

3.B.120(4) A provincial company may have classes of shares in addition to common shares, and in that case the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the by-laws.

3.B.120(5) Subject to section 3.B.124, if a provincial company has more than one class of shares, the rights of the holders of the shares of a class are equal in all respects.

Mutual provincial companies - shares
3.B.121(1) A mutual provincial company may not issue any share that confers on the shareholder the right to vote at any meeting of the company.

3.B.121(2) Subsection (1) does not apply in respect of any share that confers on the shareholder the right to vote by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled.

Issue of shares
3.B.122(1) Subject to this Act, the instrument of incorporation and the by-laws, shares of a provincial company may be issued at the times, to the persons and for the consideration determined by the directors.

3.B.122(2) Shares issued by a provincial company are non-assessable and the shareholders are not liable to the company or to its creditors in respect of them.

3.B.122(3) A provincial company may not issue a share until the consideration for the share is fully paid in money and received by the company.

3.B.122(4) The requirement in subsection (3) that the consideration be money does not apply
(a) when a share is issued as part of an amalgamation, or
(b) when the Superintendent has given prior approval to the consideration's being other than money.

Capital account
3.B.123(1) A provincial company must maintain a separate capital account for each class and series of shares it issues.

3.B.123(2) Unless the Superintendent approves otherwise, a provincial company must add to the appropriate capital account in respect of any shares it issues the full amount of the consideration it receives for the shares.

3.B.123(3) On the issue of a share, a provincial company may not add to a capital account in respect of the share an amount greater than the amount referred to in subsection (2).

3.B.123(4) If a provincial company proposes to add any amount to a capital account it maintains in respect of a class or series of shares and

(a) the amount to be added was not received by the company as consideration for the issue of shares, and

(b) the company has issued outstanding shares of more than one class or series,

the addition to the capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than 2 classes of convertible shares referred to in section 3.B.136(5).

3.B.123(5) Where, in the case of a proposed addition of an amount to a capital account in a situation where a special resolution is required under subsection (4), a class or series of shares of a provincial company would be affected differently from how any other class or series of shares of the company would be affected by such action, the holders of shares of the differently affected class or series are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not such shares otherwise carry the right to vote.

Shares in series

3.B.124(1) Subject to the instrument of incorporation and the by-laws, the directors of a provincial company may authorize the issue of any class of shares, other than common shares, in one or more series, and they may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series.

3.B.124(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate ratably in respect of accumulated dividends and return of capital.

3.B.124(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section confer on shares of a series

(a) greater voting rights than are attached to shares of any other series in the same class that are then outstanding, or

(b) a priority in respect of dividends or return of capital over shares of any other series in the same class that are then outstanding.

3.B.124(4) Subsection (3) does not apply to a right or privilege to exchange a share or shares for, or to convert a share or shares into, a share or shares of another class.

Shareholder's pre-emptive right

3.B.125(1) For the purposes of this section, a pre-emptive right is a right attached to a class of shares in which no shares of that class may be issued unless the shares to be issued have first been offered to each shareholder holding shares of that class

(a) in an amount that is in proportion to their holdings of the shares of that class, and
(b) at a price and on the same terms as those shares are to be offered to others.

3.B.125(2) The shares of a provincial company do not have a pre-emptive right unless the instrument of incorporation or the by-laws provide for a pre-emptive right.

3.B.125(3) A pre-emptive right does not apply in respect of shares to be issued

(a) for a consideration other than money,
(b) as a share dividend, or
(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the provincial company.

CHANGES TO SHARES

Changing shares

3.B.126(1) Subject to s.3.B.120, the directors of a provincial company may make, amend or repeal any by-laws

(a) to change the maximum number, if any, of shares of any class that the company is authorized to issue,
(b) to create new classes of shares,
(c) to change the designation of any or all of the company's shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of any or all of the company's shares, whether issued or unissued,
(d) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,
(e) to divide a class of shares, whether issued or unissued, into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached to the shares in each series,
(f) to authorize the directors to divide any class of unissued shares into series and fix the maximum number of shares, if any, in each series and the rights, privileges, restrictions and conditions attached to the shares in each series,

(g) to authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,
(h) to revoke, diminish or enlarge any authority conferred under clauses (f) and (g).

3.B.126(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

3.B.126(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is
(a) confirmed or confirmed as amended by the policyholders and shareholders under subsection (2), and
(b) approved by the Superintendent in writing.

3.B.126(4) Where a special resolution referred to in subsection (2) so states, the directors may, before it is submitted to the Superintendent for approval and without further approval of the policyholders or shareholders, revoke the special resolution.

Class vote
3.B.127(1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the by-laws otherwise provide in the case of an amendment to the by-laws referred to in clause (a), (b) or (e), entitled to vote separately as a class or series on a proposal to amend the by-law
(a) to increase or decrease any maximum number of authorized shares of that class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class,
(b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class,
(c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
  (i) to remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
  (ii) to add, remove or change prejudicially redemption rights,
  (iii) to reduce or remove a dividend preference or a liquidation preference, or
  (iv) to add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of the provincial company or sinking fund provisions,
(d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class,
(e) to create a new class of shares equal or superior to the shares of that class,
(f) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class, or

(g) to effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class.

3.B.127(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) if that series is affected by an addition or amendment to the by-laws differently from how other shares of the same class are affected.

3.B.127(3) Subsections (1) and (2) apply whether or not the shares of a class otherwise carry the right to vote.

3.B.127(4) A proposed addition or amendment to the by-laws referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the addition or amendment as a class or series and the participating policyholders have approved the addition or amendment by a special resolution.

Proposal to amend

3.B.128(1) Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 3.B.160 and 3.B.161, make a proposal to make, amend or repeal the by-laws of the company referred to in section 3.B.126(1).

3.B.128(2) If a proposal is made to make, amend or repeal the by-laws of a provincial company to effect any of the changes referred to in section 3.B.126(1), notice of the meeting of policyholders or shareholders at which the proposal is to be considered must set out the proposal.

Restriction on subordinated indebtedness

3.B.129(1) A provincial company must not issue subordinated indebtedness unless the subordinated indebtedness is fully paid for in money or, with the approval of the Superintendent, in property.

3.B.129(2) A person must not in any prospectus, advertisement, correspondence or literature relating to any subordinated indebtedness issued or to be issued by a provincial company refer to the subordinated indebtedness otherwise than as subordinated indebtedness.

3.B.129(3) When issuing subordinated indebtedness, a provincial company may provide that any aspect of the subordinated indebtedness relating to money or involving the payment of or the liability to pay money in relation to the subordinated indebtedness be in a currency other than that of Canada, including, without restricting the generality of the foregoing, the payment of any interest on the subordinated indebtedness.

OTHER MATTERS

Conversion privileges, options and rights

3.B.130(1) A provincial company may issue certificates, warrants or other evidences of conversion privileges or options or rights to acquire securities of the company, and must set out the conditions to which the conversion privileges, options or rights are subject

(a) in the certificates, warrants or other evidences, or

(b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

3.B.130(2) Conversion privileges and options or rights to purchase securities of a provincial company may be made transferable or non-transferable, and options and rights to purchase may be made separable or inseparable from any securities to which they are attached.

3.B.130(3) If a provincial company has granted privileges to convert any securities issued by the company into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, the company must reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Prohibited shareholdings

3.B.131(1) A provincial company

(a) may not hold shares in itself or in its holding body corporate, and

(b) may not permit any of its subsidiaries to hold shares in the company or in the holding body corporate of the company

except in accordance with this section and sections 3.B.132 to 3.B.134 or unless the Superintendent consents in writing to the holding.

3.B.131(2) A provincial company may in the capacity of personal representative hold shares in itself or in its holding body corporate so long as the company or the holding body corporate or a subsidiary of either of them does not have a beneficial interest in the shares.

3.B.131(3) A provincial company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of its business.

3.B.131(4) A provincial company holding shares in itself or in its holding body corporate may not vote or permit those shares to be voted unless the company

(a) holds the shares in the capacity of personal representative, and

(b) has complied with section 3.B.193.

Restrictions on acquisition of shares

3.B.132(1) Subject to this section, sections 3.B.142 to 3.B.154 apply to a purchase, acquisition or redemption for cancellation of voting shares by a provincial company under section 3.B.133 or 3.B.144 if the effect of the purchase, acquisition or redemption of the voting shares would cause

(a) a person to have a significant interest in those voting shares or to increase the significant interest of the person in those voting shares, or

(b) the combined holdings of a person and a person related to that person to amount to a significant interest in those voting shares or to increase the significant interest of the person and related person in those voting shares.

3.B.132(2) Despite subsection (1), in the case of a purchase, acquisition or redemption of shares referred to in subsection (1),

(a) section 3.B.145 does not apply, and

(b) the provincial company must make the application referred to in section 3.B.148(1).

Acquisition of own shares

3.B.132.1(1) Subject to subsection (4) and to its by-laws, the directors of a provincial company may authorize the company to purchase or otherwise acquire shares issued by it.

3.B.132.1(2) The directors of a provincial company may not authorize the company to make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

(a) the company is, or after the payment would be, unable to pay its liabilities as they become due, or

(b) the realizable value of the company's assets after the payment would be less than the aggregate of its liabilities and the book value of all its shares.

3.B.132.1(3) A provincial company that is not a reporting issuer must, within 30 days of the purchase of any of its issued shares, notify its shareholders

(a) of the number of shares it has purchased,

(b) of the names of the shareholders from whom it has purchased the shares,

(c) of the price paid for the shares, and

(d) of the balance, if any, remaining due to the shareholders from whom it has purchased the shares.

3.B.132.1(4) A shareholder of a provincial company other than a reporting issuer is entitled on request and without charge to a copy of the agreement between the company and any of its other shareholders under which the company has agreed to purchase, or has purchased, any of its own shares.

Alternative acquisition of own shares

3.B.132.2(1) Subject to subsection (2) and to its by-laws, the directors of a provincial company may authorize the company to purchase or otherwise acquire shares issued by it

(a) to settle or compromise a debt or claim asserted by or against the company,
(b) to eliminate fractional shares, or
(c) to fulfill the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a director, officer or employee of the company.

3.B.132.2(2) Despite section 3.B.132(4), a provincial company may purchase or otherwise acquire shares issued by it to comply with a court Order.

3.B.132.2(3) The directors of a provincial company may not authorize the company to make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

(a) the company is, or after the payment would be, unable to pay its liabilities as they become due,
(b) the realizable value of the company's assets after the payment would be less than the aggregate of
  (i) its liabilities, and
  (ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, prior to the holders of the shares to be purchased or acquired,

or

(c) the purchase or acquisition would cause the company to be in contravention of this Act or the Regulations.

Redemption of shares
3.B.133(1) Subject to subsection (2) and to its by-laws, the directors of a provincial company may authorize the company to purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price calculated according to a formula stated in the by-laws.

3.B.133(2) The directors of a provincial company may not authorize the company to make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

(a) the company is, or after the payment would be, unable to pay its liabilities as they become due,
(b) the realizable value of the company's assets after the payment would be less than the aggregate of
  (i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, ratably with or prior to the holders of the shares to be purchased or redeemed,

or

(c) the redemption would cause the company to be in contravention of this Act or the Regulations.

Donated and escrowed shares

3.B.134 A provincial company may accept from any shareholder a share of the company

(a) that is surrendered to it as a gift, or

(b) that has been held in escrow pursuant to an escrow agreement required by the Executive Director under the *Securities Act* and that is surrendered pursuant to that agreement.

Reduction of share capital

3.B.135(1) Subject to subsection (3), its instrument of incorporation and its by-laws, a provincial company, by special resolution and with the approval of the Superintendent, may reduce its share capital for any purpose.

3.B.135(2) Where a class or series of shares of a provincial company would be affected by a reduction of share capital under subsection (1) differently from how any other class or series of shares of the company would be affected by such action, the holders of shares of the differently affected class or series are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not the shares otherwise carry the right to vote.

3.B.135(3) A provincial company may not reduce its share capital, other than for the purpose of declaring it to be reduced by an amount that is not represented by realizable assets, if there are reasonable grounds for believing that

(a) the company is, or after the reduction would be, unable to pay its liabilities as they become due, or

(b) the reduction would cause the company to be in contravention of this Act or the Regulations.

3.B.135(4) A special resolution under this section must specify the capital account or accounts from which the reduction of share capital affected by the special resolution will be made.

3.B.135(5) An application for the Superintendent's approval of a special resolution must contain statements showing

(a) the number of the provincial company's shares issued and outstanding,

(b) the results of the voting by class of shares of the company,

(c) the company's assets and liabilities, and

(d) the reason why the company seeks the reduction of share capital.

3.B.135(6) A shareholder, creditor or participating policyholder of a provincial company may apply to the Court for an order compelling another shareholder or another recipient

(a) to pay to the company an amount equal to any liability of that other shareholder that was extinguished or reduced in contravention of this section, or

(b) to pay or deliver to the company any money or property that was paid or distributed to that other shareholder or recipient as a consequence of a reduction of share capital made in contravention of this section.

3.B.135(7) A proceeding to enforce a liability imposed by this section may not be commenced after 2 years from the date of the action complained of.

3.B.135(8) This section does not affect any liability that arises under section 3.B.246.

Adjustment of capital account

3.B.136(1) On a purchase, redemption or other acquisition by a provincial company under section 3.B.132, 3.B.133, 3B.140 or under court Order of shares or fractions of shares issued by it, the company must deduct from the capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the book value of the shares of that class or series by the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

3.B.136(2) A provincial company must deduct the amount of a payment made by the company to a shareholder under court Order from the capital account maintained for the class or series of shares in respect of which the payment was made.

3.B.136(3) A provincial company must adjust its capital account or accounts in accordance with any special resolution referred to in section 3.B.135(4).

3.B.136(4) On a conversion or change of issued shares of a provincial company into shares of another class or series, the company must

(a) deduct from the capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the book value of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and

(b) add the result obtained under clause (a) and any additional consideration received pursuant to the conversion or change to the capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

3.B.136(5) For the purposes of subsection (4), where a provincial company issues 2 classes or series of shares and there is attached to each class or series a right to convert a share of one class or series into a share of the other class or series, the amount to be attributed to a share in either class or series is the amount obtained when the sum of the book value of both classes or series of shares is divided by the number of issued shares of both classes or series of shares immediately before the conversion.

3.B.136(6) Shares or fractions of shares issued by a provincial company and purchased, redeemed or otherwise acquired by it must be cancelled or restored to the status of authorized but unissued shares.

3.B.136(7) For the purposes of this section, a provincial company holding shares in itself as permitted by section 3.B.131(2) or (3) is deemed not to have purchased, redeemed or otherwise acquired those shares.

3.B.136(8) Where shares of a class or series are converted or changed into the same or another number of shares of another class or series, those shares become the same in all respects as the shares of the class or series into which they are converted or changed.

Enforceability of contract to purchase shares

3.B.137(1) A contract with a provincial company providing for the purchase by it of its own shares is specifically enforceable against the company, except to the extent that it cannot perform the contract without contravening section 3.B.131.

3.B.137(2) In any action brought on a contract referred to in subsection (1), the provincial company has the burden of proving that performance of the contract is prevented by section 3.B.142 or 3.B.143.

3.B.137(3) Until the provincial company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant and is entitled

(a) to be paid as soon as the company is lawfully able to perform the contract, or

(b) in a liquidation, to be ranked subordinate to the rights of policyholders, creditors, holders of subordinated notes and any class of shareholders whose rights were in priority to the rights given to the class of shares that the other party contracted to sell to the company, but in priority to the rights of other shareholders.

Commission on sale of shares

3.B.138 The directors of a provincial company may authorize the company to pay a reasonable commission to any person in consideration of the person's
(a) purchasing or agreeing to purchase shares of the company from it or from any other person, or
(b) procuring or agreeing to procure purchasers for any such shares.

Payment of dividend
3.B.139(1) The directors of a provincial company may declare, and a provincial company may pay, a dividend by issuing fully paid shares of the company and, subject to subsection (3), a provincial company may pay a dividend in money or property.

3.B.139(2) If a provincial company issues shares of the company in payment of a dividend, it must add to the capital account for the shares of the class or series issued the declared amount of the dividend, stated as an amount of money.

3.B.139(3) The directors must not declare and a provincial company must not pay a dividend if there are reasonable grounds for believing that
(a) the company is, or after the payment would be, unable to pay its liabilities as they become due, or
(b) the payment would cause the company to be in contravention of this Act or the Regulations.

Lien on share
3.B.140(1) The by-laws of a provincial company may provide that the company has a lien on a share registered in the name of a shareholder or the shareholder's personal representative for a debt of that shareholder to the company.

3.B.140(2) A provincial company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

Restrictions on issue, transfer
3.B.141 A provincial company may not impose restrictions on the issue, transfer or ownership of shares of any class or series except to the extent that it is authorized to do so by its instrument of incorporation or this Act.

Interpretation
3.B.142 For the purposes of this section, section 3.B.132 and sections 3.B.143 to 3.B.151, a person is deemed to be related to
(a) every body corporate the person controls and every affiliate of such a body corporate,
(b) every partner of the person,
(c) every trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or in a similar capacity,

(d) the spouse of the person,
(e) every relative of the person, or of the person's spouse, who has the same home as the person, and
(f) every other person the Superintendent considers is acting in concert with the person to acquire and control voting shares of a provincial company and that the Superintendent designates by order as a related person.

Constraints on ownership
3.B.143(1) No person may, without the approval of the Superintendent, purchase or otherwise acquire any share of a provincial company or purchase or otherwise acquire control of any entity that holds any share of a provincial company if
(a) the acquisition would cause the person to have a significant interest, as defined in Section 3.B.200, in any class of shares of the company, or
(b) where the person has a significant interest in a class of shares of the company, the acquisition would increase the significant interest of the person in that class of shares.

3.B.143(2) No person and no person related to that person may, without the approval of the Superintendent, purchase or otherwise acquire any share of a provincial company or purchase or otherwise acquire control of any entity that holds any share of a provincial company if
(a) the acquisition would cause the combined holdings of the person and the related person to amount to a significant interest in any class of shares of the company, or
(b) where the combined holdings of the person and the related person amount to a significant interest in a class of shares of the company, the acquisition would increase the significant interest of the person and the related person in that class of shares.

3.B.143(3) No provincial company may, unless the acquisition of the share has been approved by the Superintendent, record in its securities register a transfer or issue of any share of the company to any person if
(a) the transfer or issue of the share would cause the person to have a significant interest in any class of shares of the company, or
(b) where the person has a significant interest in a class of shares of the company, the transfer or issue of the share would increase the significant interest of the person in that class of shares.

3.B.143(4) No provincial company may, unless the acquisition of the share has been approved by the Superintendent, record in its securities register a transfer or issue of any share of the company to any person or any person related to that person if
(a) the transfer or issue of the share would cause the combined holdings of the person and the related person to amount to a significant interest in any class of shares of the company, or

(b) where the combined holdings of the person and the related person amount to a significant interest in a class of shares of the company, the transfer or issue of the share would increase the significant interest of the person and the related person in that class of shares.

3.B.143(5) This section does not apply to any class of non-voting shares of a provincial company that do not amount to more than 10% of the equity of the company.

3.B.143(6) If the Superintendent's approval is required under subsection (1), (2), (3) or (4) before a provincial company may record in its security register a transfer or issue of a share of the company to a person, the person may not exercise any voting rights attached to those shares until the Superintendent's approval is obtained.

Previous approval obtained

3.B.144(1) Where the Superintendent's approval is given under section 3.B.143 with respect to a person or other persons related to that person, no approval under section 3.B.143 is required with respect to those persons in respect of a subsequent transfer or issue of voting shares unless, as a result of the transfer or issue, the shareholdings or beneficial ownership of those persons would undergo an increase of more than 5% from the shareholdings or beneficial ownership calculated immediately after the previous approval was given.

3.B.144(2) The exception set out in subsection (1) does not apply

(a) to a transfer or issue of shares that would result in a change of control of the provincial company, or

(b) where, since the previous approval was given, the shareholdings or beneficial ownership of the person and other persons related to that person have decreased by more than 5% from the shareholdings or beneficial ownership calculated immediately after the previous approval was given.

Shares to underwriter

3.B.145 The approval of the Superintendent under section 3.B.143 is not required in respect of a transfer or issue of shares to an underwriter, as defined in the *Securities Act*, who receives them in that capacity.

Exception for small holdings

3.B.146 Despite section 3.B.143(3) and (4), where, as a result of a transfer or issue of shares of a class of shares of a provincial company to a person, the total number of shares of that class registered in the securities register of the company in the name of the person

(a) would not exceed 5000, and

(b) would not exceed 0.1 per cent of the outstanding shares of that class, the company is entitled to act as though no person is acquiring or increasing a significant interest in that class of shares of the company as a result of that issue or transfer of shares unless it has actual knowledge that the person is acquiring or increasing a significant interest in that class of shares.

Increasing large holdings

3.B.147 The approval of the Superintendent under section 3.B.143 is not required where a person who holds 95% or more of the total rights attached to all of the outstanding voting shares of a company purchases or otherwise acquires additional shares of the company.

Superintendent's approval

3.B.148(1) Where an approval is required under section 3.B.143,
- (a) the person to whom the shares are to be transferred or issued, or
- (b) where the person referred to in clause (a) will not be the beneficial owner of the shares, that person and the beneficial owner jointly,

must apply for the approval and must provide the Superintendent with any information the Superintendent requires in support of the application.

3.B.148(2) On an application under subsection (1), the Superintendent must take into account all matters that the Superintendent considers relevant to the application, including
- (a) whether any of the holders or beneficial owners to whom the approval relates
  - (i) is or has been bankrupt,
  - (ii) has been convicted of a criminal offence, an offence under this Act or an offence under the *Securities Act* or comparable legislation of another jurisdiction in Canada,
  - (iii) is or has been subject to a cease trading order under the *Securities Act* or comparable legislation of another jurisdiction in Canada,
  - (iv) is the subject of a special examination;
  - (v) is, in the Superintendent's opinion, contravening any provision of this Act or the Regulations or of any comparable legislation of another jurisdiction or of any undertaking given to the Superintendent, or
  - (vi) has failed to provide the information required under subsection (1);
- (b) the nature and sufficiency of the financial resources of the holders or beneficial owners to whom the approval relates as a source of continuing financial support for the provincial company;
- (c) where the transfer or issue would result in a change in control of the provincial company, the soundness and feasibility of plans of the holders or beneficial owners to whom the approval relates for the future conduct and development of the business of the company;
- (d) the business record and experience of the holders or beneficial owners to whom the approval relates;

(e) whether the provincial company will be operated responsibly by persons who are fit as to character and are competent for that purpose;
(f) the best interests of the financial system in the Province.

3.B.148(3) The approval of the Superintendent under this section takes effect on the date set out in the approval, and the effective date may be a date before the date the approval is given.

Superintendent's right to information
3.B.149(1) The Superintendent may in writing direct a provincial company to obtain from a person in whose name a share is registered in the securities register of the company or who is the beneficial owner of a share of the company a declaration containing any or all of the following information:
(a) information concerning the ownership or beneficial ownership of the share;
(b) information as to whether the share is held or beneficially owned by a person who is related to that person, and the name of the related person where applicable;
(c) information as to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident;
(d) information concerning the ownership or beneficial ownership of the shares of a holding body corporate;
(e) information concerning any other matters specified by the Superintendent.

3.B.149(2) The directors of a provincial company that is the subject of a direction under subsection (1) must ensure that the company forthwith complies with the direction.

3.B.149(3) A provincial company that is the subject of a direction under subsection (1) may request a person who has possession of or access to the information required to provide a declaration containing the information to the Superintendent, and that person must forthwith comply with the request.

Exemption
3.B.150(1) The Superintendent may by order exempt any provincial company or other person from the application of section 3.B.143 in whole or in part and on any terms and conditions set out in the order.

3.B.150(2) The *Regulations Act* does not apply to an order under subsection (1).

By-laws re shareholder information
3.B.151(1) The directors of a provincial company may make by-laws
(a) requiring any person holding any voting share of the company to submit written declarations
(i) with respect to the ownership and beneficial ownership of a share of the company or of a holding body corporate,

(ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,
(iii) as to whether the shareholder is related to other persons, and
(iv) with respect to any other matters the directors consider relevant for the purposes of sections 3.B.142 to 3.B.149,

(b) prescribing the times at which and the manner in which any declarations required under clause (a) are to be submitted, and
(c) requiring any person desiring to have a transfer of a share to the person recorded in the securities register of the company to submit a declaration referred to in clause (a) as if the person were a shareholder.

3.B.151(2) Where under any by-law made under subsection (1) a declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may refuse to allow the entry of the transfer of the share in the securities register of the provincial company until the required declaration has been submitted.

Reliance on information
3.B.152 A director of a provincial company and any other person acting as proxy for a shareholder of the company may rely on a statement made in a declaration made pursuant to a by-law under section 3.B.155(1) and on their own knowledge of the circumstances for the purposes of determining
(a) the residence of a person,
(b) who controls a body corporate, or
(c) any other circumstances relevant to the performance of their duties under sections 3.B.142 to 3.B.149,

and the director or other person is not liable in any action for anything done or omitted by the director or other person in good faith in reliance on that statement or that knowledge.

3.B.152.1(1) No transfers of shares of an insurer shall be entered in the book or books maintained for that purpose until thirty days after notice thereof has been deposited with the Superintendent if,
(a) the transfer relates to 10 per cent or more of the issued shares of the insurer for the time being enjoying rights; or
(b) the directors have reason to believe that the transfer would result in a majority of the issued shares of the insurer for the time being enjoying rights being beneficially owned by any one person.

Register examination
3.B.152.1(2) Where the insurer has a share or stock capital, the stock register shall at all reasonable times be open to the examination by the Superintendent, and in the case of a non-share insurer, the register of members shall at all reasonable times be open to examination by any member thereof and by the Superintendent.

Copy of member register

3.B.152.1(3) A member entitled to examination of a register is entitled to make or receive a copy thereof upon payment of the reasonable reproduction costs to the insurer.

PARTICIPATING POLICYHOLDERS AND SHAREHOLDERS

Division 1 - Meetings and Voting

Place of meetings

3.B.153(1) Meetings of participating policyholders or shareholders of a provincial company must be held at the place in the Province provided for in the by-laws of the company or, in the absence of any such provision, at the place in the Province that the directors determine.

3.B.153(2) The Superintendent may, on application, exempt a provincial company from holding a meeting of participating policyholders or shareholders in the Province .

Calling meetings

3.B.154 The directors of a provincial company

(a) must, after the meeting called pursuant to section 3.B.21, call the first annual meeting of participating policyholders and shareholders of the provincial company, which meeting must be held not later than 6 months after the end of the first financial year of the company,

(b) must subsequently call an annual meeting of participating policyholders and shareholders, which meeting must be held not later than 6 months after the end of each financial year, and

(c) may at any time call a special meeting of participating policyholders or shareholders.

Record date

3.B.155(1) For the purpose of determining

(a) shareholders entitled to receive payment of a dividend,

(b) participating policyholders or shareholders entitled to participate in a liquidation distribution,

(c) who is a shareholder for any other purpose except the right to receive notice of, or to vote at, a meeting, or

(d) who is a policyholder for any other purpose except

  (i) the right to receive notice of, or to vote at, a meeting,

  (ii) the right to receive payment of a policy dividend or bonus, and

  (iii) any purpose where the determination of policyholders is governed by contract,

the directors may fix in advance a date as the record date for the determination of policyholders or shareholders, but the record date so fixed must not precede the particular action to be taken by more than 50 days.

3.B.155(2) If no record date is fixed under subsection (1) for the determination of policyholders or shareholders for any purpose for which a record date could have been fixed under that subsection, the record date for the determination of policyholders or shareholders for that purpose is the date on which the directors pass the resolution relating to that purpose.

3.B.155(3) For the purpose of determining participating policyholders entitled to receive notice of a meeting of participating policyholders, the directors may fix in advance a date as the record date for the determination of participating policyholders, but the record date so fixed must not precede the date on which the meeting is to be held by more than 90 days or less than 21 days.

3.B.155(4) If no record date is fixed under subsection (3) for the determination of participating policyholders entitled to receive notice of a meeting, the record date for that purpose is
(a) the day immediately before the day on which the notice is given, or
(b) if no notice is given, the day on which the meeting is held.

3.B.155(5) Before a meeting of participating policyholders, the directors may fix a date as the record date for the purpose of determining participating policyholders entitled to vote at the meeting, and that record date must not be more than 10 days before the date on which the meeting is to be held.

3.B.155(6) If no record date is fixed under subsection (5) for the determination of participating policyholders entitled to vote at a meeting, the record date for that purpose is the day on which the meeting is held.

3.B.155(7) For the purpose of determining shareholders entitled to receive notice of and to vote at a meeting of shareholders, the directors may fix in advance a date as the record date for the determination of shareholders, but the record date so fixed must not precede the date on which the meeting is to be held by more than 50 days or less than 21 days.

3.B.155(8) If no record date is fixed under subsection (7) for the determination of shareholders entitled to receive notice of and to vote at a meeting, the record date for the determination of shareholders entitled to receive notice of and to vote at the meeting is
(a) the day immediately before the day on which the notice is given, or
(b) if no notice is given, the day on which the meeting is held.

3.B.155(9) Subject to subsections (10) and (11), where a record date is fixed for a provincial company, notice of the record date must be given, not less than 7 days before the record date,

(a) by advertisement in a newspaper in general circulation in the place where the head office of the provincial company is located and in each place in Canada where the provincial company has a transfer agent or where a transfer of the company's shares may be recorded, and
(b) by written notice to each recognized stock exchange in Canada on which the shares of the company are listed for trading.

3.B.155(10) Notice of a record date fixed for a provincial company need not be given if
(a) the company has no participating policyholders or notice of the record date is waived in writing by every participating policyholder who holds a policy at the close of business on the date the directors fix as the record date, and
(b) notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the central securities register at the close of business on the date the directors fix as the record date.

3.B.155(11) Where the by-laws provide, a provincial company is not required to give notice by advertisement in a newspaper under subsection (9) of a record date for the determination of participating policyholders or shareholders entitled to receive notice of a meeting of participating policyholders or shareholders if the record date is included in the notice of the meeting.

Notice of meeting
3.B.156(1) Notice of the time and place of a meeting of participating policyholders or shareholders of a provincial company must be sent not less than 21 days nor more than 50 days before the meeting to
(a) each shareholder entitled to receive notice of the meeting,
(b) each participating policyholder who has within 3 years before the record date fixed or determined under section 3.B.155(3) or (4) completed and returned to the company the form referred to in section 3.B.178(1)(b) if no business referred to in clause (c) is to be dealt with at the meeting,
(c) every participating policyholder determined under section 3.B.155(3) or (4) if any of the following business is to be dealt with at the meeting:
(i) authorizing the company to apply to the Superintendent for the approval of a mutualisation proposal or of an amalgamation agreement,
(ii) confirming a by-law changing the rights of policyholders to vote at meetings of policyholders or shareholders,
(iii) approving an agreement setting out the terms and means of effecting
(A) the transfer of all or substantially all of the company's policies, or
(B) the reinsurance of all or substantially all of the company's policies,
or
(iv) approving a proposal to convert the company from a mutual provincial company into a provincial company with common shares,
(d) each director,

(e) the auditor of the company, and
(f) the actuary of the company.

3.B.156(2) The Superintendent may exempt a provincial company from the application of subsection (1)(c) with respect to business consisting of the approval of an amalgamation agreement, having regard to the size of the company and of the companies or bodies corporate with which it proposes to amalgamate.

3.B.156(3) In addition to the notice required under subsection (1),
(a) where any class of shares of a provincial company is publicly traded on a recognized stock exchange in Canada, notice of the time and place of the meeting of shareholders must be published once a week for at least 4 consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the head office of the company is located and in each place in Canada where the company has a transfer agent or where a transfer of the company's shares may be recorded, or
(b) where the company is a mutual provincial company, notice of the time and place of the meeting of participating policyholders of the company and the nature of the business in sufficient detail to permit a participating policyholder to form a reasoned judgment on the nature of the business, together with information on the means by which any policyholder can receive the notice referred to in subsection (1), must be
  (i) published once a week for at least 4 consecutive weeks before the date of the meeting in a newspaper in general circulation in the place where the head office of the company is located and in each province in which more than 1% of the total number of participating policyholders reside, or
  (ii) sent to every participating policyholder.

3.B.156(4) A notice of the annual meeting of participating policyholders and shareholders must include a copy of the provincial company's annual financial statements for the preceding year unless the participating policyholder or shareholder has advised the provincial company that the holder does not wish to receive the annual financial statements.

3.B.156(5) Failure to receive a notice of a meeting of participating policyholders or shareholders does not deprive a participating policyholder or shareholder of the right to vote at the meeting.

Notice of adjourned meeting

3.B.157(1) If a meeting of participating policyholders or shareholders of a provincial company is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of the adjournment.

3.B.157(2) If a meeting of participating policyholders or shareholders of a provincial company is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting must be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, section 190 does not apply.

Special business
3.B.158(1) All matters dealt with at an annual or special meeting of participating policyholders or shareholders are special business except consideration of

(a) the financial statements,
(b) the auditor's report,
(c) the actuary's report,
(d) the election of directors,
(e) the remuneration of directors and reappointment of the incumbent auditor, or
(f) the description of the roles of the actuary and the auditor in the preparation and audit of the financial statements.

3.B.158(2) Notice of a meeting of participating policyholders or shareholders of a provincial company at which special business is to be transacted must

(a) state the nature of the special business in sufficient detail to permit a participating policyholder or shareholder to form a reasoned judgment on the nature of the special business,
(b) contain the text of any special resolution to be submitted to the meeting, and
(c) state, where a management proxy circular is sent to shareholders concurrently with the notice, that a participating policyholder is entitled on request to receive a copy of the management proxy circular.

3.B.158(3) The Superintendent may exempt a provincial company from the application of subsection (2)(b) in relation to participating policyholders, on condition that, instead of sending the policyholders the text of a special resolution to be submitted to a meeting, the company send the policyholders a summary of the text.

3.B.158(4) The text of a special resolution may be amended at a meeting of participating policyholders or shareholders if the amendments correct manifest errors or are not material.

Waiver of notice
3.B.159(1) A participating policyholder, a shareholder and any other person entitled to attend a meeting of participating policyholders or shareholders may in any manner waive notice of a meeting of participating policyholders or shareholders.

3.B.159(2) Attendance at a meeting of participating policyholders or shareholders is a waiver of notice of the meeting, except when a person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Policyholder and shareholder proposals

3.B.160(1) A policyholder or shareholder of a provincial company may

(a) submit to the company notice of a proposal of any matter that the participating policyholder or shareholder intends to raise at the meeting, and

(b) discuss at the meeting any matter in respect of which the participating policyholder or shareholder would have been entitled to submit a proposal.

3.B.160(2) A provincial company must attach any notice of proposal of a participating policyholder or shareholder submitted for consideration at a meeting of policyholders and shareholders to the notice of the meeting.

3.B.160(3) If so requested by a participating policyholder or shareholder who submits a notice of proposal to a provincial company, the company must attach to the notice of the meeting a statement by the participating policyholder or shareholder of not more than 200 words in support of the proposal and the name and address of the participating policyholder or shareholder.

3.B.160(4) A proposal may include nominations for the election of directors if the proposal is signed by

(a) one or more holders of shares representing in the aggregate not less than 5% of the share or 5% of the shares of a class of shares of the provincial company entitled to vote at the meeting to which the proposal is to be presented, in the case of nominations for the directors to be elected by shareholders, or

(b) at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is less, in the case of nominations for the directors to be elected by participating policyholders.

3.B.160(5) A provincial company is not required to comply with subsections (2) and (3) if

(a) the notice of the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of participating policyholders and shareholders,

(b) it clearly appears that the proposal is submitted by the participating policyholder or shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers or security holders, or for a purpose that is not related in any significant way to the business or affairs of the company,

(c) the company, at the participating policyholder's or shareholder's request, attached a notice of proposal to the notice of a meeting of participating policyholders or shareholders held within 2 years preceding the receipt of the request, and the participating policyholder or shareholder failed to present the proposal, in person or by proxy, at the meeting,

(d) substantially the same proposal was submitted to participating policyholders or shareholders in a dissident's proxy circular relating to, or was attached to the notice of, a meeting of participating policyholders or shareholders held within 2 years preceding the receipt of the participating policyholder's or shareholder's request and the proposal was defeated,

(e) in the case of a proposal submitted by a participating policyholder that relates to business that is referred to in section 156(1)(c), the notice of proposal is not signed by at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is less,

(f) in the case of any other proposal submitted by a participating policyholder, the notice of proposal is not signed by at least 100 participating policyholders, or

(g) in the case of a proposal submitted by a participating policyholder, the proposal

  (i) relates to the management of the ordinary business and affairs of the company,

  (ii) would, if implemented, result in a change in the character or direction of the company that would have a material adverse effect on the ability of the company to meet the reasonable expectations of the company's participating policyholders as to the net cost of their insurance, or

  (iii) would result in the conversion of a mutual provincial company into a provincial company with common shares.

3.B.160(6) No provincial company or person acting on behalf of a company incurs any liability by reason only of circulating a notice of proposal or statement in compliance with subsections (2) and (3).

Refusal of proposal

3.B.161(1) If a provincial company refuses to attach a proposal to the notice of the meeting, the company must, within 10 days after receiving the proposal, notify the participating policyholder or shareholder submitting the proposal of its intention not to attach the proposal to the notice of the meeting and send to the participating policyholder or shareholder a statement of the reasons for the refusal.

3.B.161(2) On the application of a participating policyholder or shareholder claiming to be aggrieved by a provincial company's refusal under subsection (1), the Court may restrain the holding of the meeting at which the proposal is sought to be presented and make any further order it thinks fit.

3.B.161(3) A provincial company or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the company not to attach the notice of proposal to the notice of the meeting, and the Court, if it is satisfied that section 3.B.160(5) applies, may make any order it thinks fit.

3.B.161(4) An applicant under subsection (2) or (3) must give the Superintendent written notice of the application, and the Superintendent may appear and be heard at the hearing of the application in person or by counsel.

Policyholder and shareholder lists

3.B.162(1) For each meeting of participating policyholders or shareholders of a provincial company, the company must prepare

(a) a list of its participating policyholders entitled to vote at the meeting, and

(b) a list of its shareholders entitled to vote at the meeting arranged in alphabetical order and showing the number of shares held by each shareholder.

3.B.162(2) If a record date is fixed under section 3.B.155(5), the list of participating policyholders must be prepared not later than the day on which the meeting is held and, if no record date is fixed under section 3.B.167(5), the list must be prepared on the day on which the meeting is held.

3.B.162(3) If a record date is fixed under section3.B.155(7), the list of shareholders must be prepared not later than 10 days after that record date, and if no record date is fixed under section3.B.155(7), the list must be prepared

(a) at the close of business on the day immediately before the day on which the notice of the meeting is given, or

(b) if no notice is given, on the day on which the meeting is held.

3.B.162(4) A list of participating policyholders or shareholders may be in electronic form.

3.B.162(5) Subject to this Act, a person named in a list of participating policyholders prepared under subsection (1) is entitled to vote at the meeting to which the list relates unless, after the record date fixed under section 3.B.155(5) or, if no record date is fixed under section3.B.155(5), after the date on which the list was prepared,

(a) the person has transferred the policy entitling the holder to vote, in which case the transferee is entitled to vote at the meeting, or

(b) the policy entitling the person to vote is not in force.

3.B.162(6) Subject to this Act, a person named in a list of shareholders prepared under subsection (1) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates unless

(a) the person has transferred the ownership of any of those shares after the record date fixed under section3.B.155(7), or if no record date is fixed under section3.B.155(7), after the date on which the list was prepared, and

(b) the transferee of those shares

(i) produces properly endorsed share certificates, or

(ii) otherwise establishes that the transferee owns the shares, and demands, not later than 10 days before the meeting or such shorter period before the meeting as the by-laws of the company provide, that the transferee's name be included in the list before the meeting, in which case the transferee may vote those transferred shares at the meeting.

3.B.162(7) A participating policyholder or shareholder of a provincial company may examine the list of shareholders prepared under subsection (1)

(a) during usual business hours at the company's head office or, if the company has been authorized to keep its central securities register at a place other than its head office, at that other place, and

(b) at the meeting of shareholders for which the list was prepared.

3.B.162(8) A participating policyholder or shareholder of a provincial company may, at the meeting of participating policyholders for which the list referred to in subsection (1) was prepared, require the company to verify from that list whether a person identified both by name and by some other distinguishing feature is entitled to vote at that meeting.

Quorum

3.B.163(1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares who are entitled to vote at the meeting are present in person or represented by proxyholders.

3.B.163(2) A quorum of participating policyholders is present at a meeting of participating policyholders if at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is less, are present in person or represented by proxyholders.

3.B.163(3) A quorum of participating policyholders and shareholders is present at a meeting of participating policyholders and shareholders if

(a) unless the by-laws otherwise provide, the holders of a majority of the shares who are entitled to vote at the meeting, and

(b) at least 100 participating policyholders or 10% of the total number of those policyholders, whichever is less,

are present in person or represented by proxyholders.

3.B.163(4) If a quorum is present at the opening of a meeting of participating policyholders or shareholders, the participating policyholders or shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting even though a quorum is not present throughout the meeting.

3.B.163(5) If a quorum is not present at the opening of a meeting of participating policyholders or shareholders, or within such reasonable time after the opening of the meeting as the participating policyholders or shareholders present may determine, the participating policyholders or shareholders present may adjourn the meeting to a fixed time and place, but may not transact any other business.

One shareholder meeting
3.B.164 If a provincial company has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or represented by a proxyholder constitutes a meeting of shareholders or a meeting of shareholders of that class or series.

Meeting by electronic means
3.B.165 A participating policyholder, shareholder or other person entitled to attend a meeting of participating policyholders or shareholders may participate in the meeting by means of telephone or other communication devices that permit all persons participating in the meeting to hear each other, and a person participating in such a meeting by those means is, for the purposes of this Act, present at the meeting.

One share - one vote
3.B.166 Unless the by-laws otherwise provide, each share of a provincial company that entitles the holder of the share to vote at a meeting of shareholders or participating policyholders and shareholders entitles the shareholder to one vote at the meeting.

One participating policyholder - one vote
3.B.167 The holder of one or more participating policies issued by a provincial company is entitled to attend, and is also entitled to one vote at, a meeting of participating policyholders or participating policyholders and shareholders of the company.

Changing policyholder's right to vote
3.B.168(1) Subject to section 3.B.167, the directors of a provincial company may make, amend or repeal any by-law to change the rights of participating policyholders to vote at meetings of participating policyholders and shareholders.

3.B.168(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

3.B.168(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is
(a) confirmed or confirmed as amended by the participating policyholders and shareholders under subsection (2), and
(b) approved by the Superintendent in writing.

3.B.168(4) Where a special resolution referred to in subsection (2) so states, the director may, before it is submitted to the Superintendent for approval and without further approval of the participating policyholders or shareholders, revoke the special resolution.

Proposal to amend

3.B.169(1) Subject to subsection (2), a director or a participating policyholder or shareholder of a provincial company may, in accordance with sections 3.B.160 and 3.B.161, make a proposal to make, amend or repeal the by-laws of the company referred to in section 3.B.168.

3.B.169(2) If a proposal is made to make, amend or repeal the by-laws of a provincial company to effect any of the changes referred to in section 3.B.168, notice of the meeting of participating policyholders and shareholders at which the proposal is to be considered must set out the proposal.

Represent-active participating policyholder or shareholder

3.B.170(1) If an entity is a participating policyholder or shareholder of a provincial company, the company must recognize any individual authorized by a resolution of the directors or governing body or similar authority of the entity to represent it at meetings of participating policyholders or shareholders of the company.

3.B.170(2) An individual authorized under subsection (1) to represent an entity may exercise on behalf of the entity all the powers the entity could exercise if the entity were an individual who was a participating policyholder or shareholder.

Joint voting policyholders or shareholders

3.B.171 Unless the by-laws otherwise provide, if two or more persons hold policies or shares jointly, one of those holders present at a meeting of participating policyholders or shareholders may, in the absence of the others, vote the shares or policies, but if two or more of those persons who are present in person or represented by proxyholder vote, they must vote as one on the policies or shares jointly held by them.

Voting by hands or ballot

3.B.172(1) Unless the by-laws otherwise provide, voting at a meeting of participating policyholders or shareholders must take place by show of hands except when a ballot is demanded by a participating policyholder, shareholder or proxyholder entitled to vote at the meeting.

3.B.172(2) A participating policyholder, shareholder or proxyholder may demand a ballot either before or on the declaration of the result of a vote by show of hands.

Resolution in lieu of meeting

3.B.173(1) Except where a written statement is submitted by a director under section 3.B.212 or by an auditor under section 3.B.265(1),

(a) a resolution in writing signed by all the participating policyholders and shareholders entitled to vote on that resolution at a meeting of participating policyholders or shareholders is as valid as if it had been passed at a meeting of the participating policyholders or shareholders, and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of participating policyholders or shareholders, and signed by all the participating policyholders and shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of participating policyholders or shareholders.

3.B.173(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of participating policyholders or shareholders.

Requisitioned meetings

3.B.174(1) Shareholders who together hold not less than 5% of the issued and outstanding shares of a provincial company that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders or participating policyholders and shareholders for the purposes stated in the requisition.

3.B.174(2) At least 100 participating policyholders or 10% of the total number of those policyholders, whichever is less, may requisition the directors to call a meeting of participating policyholders or participating policyholders and shareholders for the purposes stated in the requisition.

3.B.174(3) A requisition referred to in subsection (1) or (2)

(a) must state the business to be transacted at the meeting and must be sent to each director and to the provincial company's head office, and

(b) may consist of several documents of similar form, each signed by one or more participating policyholders or shareholders.

3.B.174(4) The requisitioner must give notice to the Superintendent of a requisition made under subsection (1) or (2).

3.B.174(5) On receipt of a requisition referred to in subsection (1) or (2), the directors must call a meeting of participating policyholders or shareholders to transact the business stated in the requisition, unless

(a) a record date has been fixed under section3.B.155(3) or (7) and notice of the record date has been given under section3.B.155(9),

(b) the directors have called a meeting of participating policyholders or shareholders and have given notice of the meeting under section 3.B.156, or

(c) the business of the meeting as stated in the requisition includes matters described in section 3.B.160(5)(b) to (d) and (g).

3.B.174(6) If the directors do not call a meeting within 21 days after receiving a requisition referred to in subsection (1) or (2), any participating policyholder or shareholder who signed the requisition may call the meeting.

3.B.174(7) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and this Act.

3.B.174(8) Unless the participating policyholders or shareholders otherwise resolve at a meeting called under subsection (6), the provincial company must reimburse the participating policyholders or shareholders for any expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by Court

3.B.175(1) Where it is impracticable

(a) to call a meeting of participating policyholders or shareholders of a provincial company in the manner in which meetings of those policyholders or shareholders are to be called, or

(b) to conduct the meeting in the manner required by the by-laws and this Act, or

(c) where the Court thinks fit to do so for any other reason,

the Court, on the application of a director or a participating policyholder or shareholder, may order a meeting to be called, held and conducted in such manner as the Court directs.

3.B.175(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

3.B.175(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of participating policyholders or shareholders of the provincial company duly called, held and conducted.

Disputed elections and appointments

3.B.176(1) A provincial company or a participating policyholder, shareholder or director of a company may apply to the Court to resolve any dispute in respect of the election or appointment of a director or an auditor of the company.

3.B.176(2) On an application under subsection (1), the Court may make any order it thinks fit, including, without limiting the generality of the foregoing,

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute,

(b) an order declaring the result of the disputed election or appointment,
(c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held or the new appointment is made, and
(d) an order determining the voting rights of shareholders, persons claiming to own shares, participating policyholders and persons claiming to be participating policyholders.

Notice to Superintendent

3.B.177(1) A person who makes an application under section 3.B.175(1) or 3.B.176(1) must give notice of the application to the Superintendent before the hearing and must deliver a copy of the order of the Court, if any, to the Superintendent.

3.B.177(2) The Superintendent may appear and be heard in person or by counsel at the hearing of an application referred to in subsection (1).

Triennial solicitation of policyholders

3.B.178(1) A provincial company must, at the time of the application for or issuance of a policy the holder of which is entitled to vote at meetings of the participating policyholders or participating policyholders and shareholders of the company and at least once every 3 years after the application,
(a) advise the participating policyholder of the policyholder's right to attend and to vote in person or by proxy at those meetings,
(b) provide the policyholder with a form for the policyholder to complete and return to the company if the policyholder wishes to receive notices of the meetings of the participating policyholders or participating policyholders and shareholders during the next 3 years, and
(c) provide the participating policyholder with a form of proxy.

3.B.178(2) Subsection (1) does not apply in respect of a provincial company that is providing its participating policyholders with notices of all meetings of participating policyholders and shareholders.

Application of Insurance Companies Act (Canada)

3.B.179 The Minister may prescribe by Regulation those provisions of the Insurance Companies Act (Canada), which shall be applied with respect to a provincial company as if the provincial company were a corporation within the meaning of that Act in respect of any take-over bids and the compulsory purchase of shares thereby.

PARTICIPATING POLICIES AND DIVIDENDS

Participating account

3.B.180(1) A provincial company must maintain accounts, in the form and manner determined by the Superintendent, in respect of participating policies, separate from those maintained in respect of other policies.

3.B.180(2) The accounts maintained in respect of participating policies are referred to in this Subpart as participating accounts.

Allocation of income

3.B.181 A provincial company must credit to, or debit from, a participating account that portion of the investment income or losses of the company for a financial year, including accrued capital gains or losses, whether or not realized, that is determined in accordance with a method that is

(a) in the written opinion of the actuary of the company, fair and equitable to the participating policyholders,

(b)approved by resolution of the directors, after considering the written opinion of the actuary of the company, and

(c) not disallowed by the Superintendent on the ground that it is not fair and equitable to the participating policyholders within 90 days after the Superintendent receives the resolution under section 3.B.183.

Allocation of expenses

3.B.182 A provincial company must debit from a participating account that portion of the expenses, including taxes, of the company for a financial year that is determined in accordance with a method that is

(a) in the written opinion of the actuary of the company, fair and equitable to the participating policyholders,

(b) approved by resolution of the directors, after considering the written opinion of the actuary of the company, and

(c) not disallowed by the Superintendent on the ground that it is not fair and equitable to the participating policyholders within 90 days after the Superintendent receives the resolution under section 3.B.183.

Filing of allocation method

3.B.183 The directors of a provincial company must file a copy of any resolution referred to in section 3.B.181(b) or 3.B.182(b) with the Superintendent, together with a copy of the written opinion of the actuary of the company and any other information that the Superintendent requests, within 30 days after making the resolution.

Review of allocation method

3.B.184 The actuary of a provincial company must report annually in writing to the directors on the fairness and equitableness of the method used by the company for allocating its investment income and losses and expenses to a participating account.

Declaration of policy dividend or bonus
3.B.186(1) Subject to this section, the directors of a provincial company that issues participating policies may declare, and the company may pay or otherwise satisfy, a dividend, bonus or other benefit on those policies in accordance with its dividend or bonus policy.

3.B.186(2) The directors must, before declaring a dividend, bonus or other benefit on participating policies, consider a written report, which the actuary of the provincial company must make, on whether in the actuary's opinion the dividend, bonus or other benefit is in accordance with the dividend or bonus policy of the company.

3.B.186(3) The directors of a provincial company must not declare a dividend, bonus or other benefit to participating policyholders if there are reasonable grounds for believing that the company is, or the payment or other satisfaction would cause the company to be, in contravention of the requirements of this Part.

Division 2 - Proxies and Proxy Solicitation

Definitions
3.B.187 In this Division,

"registrant" means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction;

"solicit" or **"solicitation"** includes
(i) a request for a proxy, whether or not accompanied by or included in a form of proxy,
(ii) a request to execute or not to execute a form of proxy or to revoke a proxy,
(iii) the sending of a form of proxy or other communication to a participating policyholder or shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
(iv) the sending of a form of proxy to a shareholder under section 3.B.189,
but does not include
(v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a participating policyholder or shareholder,
(vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
(vii) the sending by a registrant of the documents referred to in section 3.B.186, or
(viii) a solicitation by a person in respect of shares of which that person is the beneficial owner;

"solicitation by or on behalf of the management of a provincial company" means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of the directors of the company.

Appointing proxyholder
3.B.188(1) A participating policyholder or shareholder may, by executing a form of proxy, appoint a proxyholder or one or more alternate proxyholders, who are not required to be policyholders or shareholders, to attend and act at the meeting of participating policyholders or shareholders in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

3.B.188(2) A form of proxy must be executed by a participating policyholder or shareholder or by a participating policyholder's or shareholder's attorney authorized in writing to do so.

3.B.188(3) No appointment of a proxyholder provides authority for the proxyholder to act in respect of the appointment of an auditor or the election of a director unless
(a) a nominee proposed in good faith for the appointment or election is named in the form of proxy, a management proxy circular, a dissident's proxy circular or a proposal under section 3.B.160(1), or
(b) the form of proxy was sent to a participating policyholder pursuant to section 3.B.178.

3.B.188(4) No appointment of a proxyholder by executing a form of proxy sent to a participating policyholder pursuant to section 3.B.178 provides authority for the proxyholder to act in respect of business referred to in section 3.B.156(1)(c).

3.B.188(5) An appointment of a proxyholder by executing a form of proxy sent to a participating policyholder pursuant to section 3.B.178 after a provincial company receives a dissident's proxy circular does not provide authority for the proxyholder to act at the meeting in respect of which the dissident's proxy circular is sent.

3.B.188(6) A form of proxy must indicate, in boldface type, that the participating policyholder or shareholder by whom or on whose behalf it is executed may appoint a proxyholder, other than a person designated in the form of proxy, to attend and act on the policyholder's or shareholder's behalf at a meeting to which the proxy relates, and must contain instructions as to the manner in which the policyholder or shareholder may do so.

3.B.188(7) Subject to subsections (4) and (5), a proxy given by a policyholder by executing a form of proxy sent to the participating policyholder pursuant to section 292 is valid for a period of two years after it is given or a lesser period specified in the proxy and at any adjournment of a meeting begun during that period, and any other proxy is valid only at the meeting in respect of which it is given or any adjournment of the meeting.

3.B.188(8) A participating policyholder or shareholder may revoke a proxy

(a) by depositing a letter executed by the policyholder or shareholder or by the policyholder's or shareholder's attorney authorized in writing to do so

(i)at the provincial company's head office at any time up to and including the last business day preceding the day of a meeting, or an adjournment of the meeting, at which the proxy is to be used, or

(ii)with the chair of the meeting on the day of the meeting or an adjournment of the meeting,

or

(b) in any other manner permitted by law.

Deposit of proxies

3.B.189(1) The directors may specify in a notice calling a meeting of participating policyholders or shareholders a time preceding the meeting or an adjournment of the meeting before which time executed forms of proxy to be used at the meeting must be deposited with the provincial company or its transfer agent.

3.B.189(2) The time specified for the deposit of forms of proxy may not precede the meeting by more than

(a) 48 hours, excluding Saturdays, Sundays and holidays, in the case of forms of proxy executed by shareholders, and

(b) 10 days, in the case of forms of proxy executed by participating policyholders.

Mandatory solicitation

3.B.190(1) Subject to section 3.B.157(2) and subsection (2), the management of a provincial company must, concurrently with giving notice of a meeting of shareholders, send a form of proxy to each shareholder entitled to receive notice of the meeting.

3.B.190(2) Where a provincial company has fewer than 15 shareholders, two or more joint holders being counted as one shareholder, the management of the company is not required to send a form of proxy to the shareholders under subsection (1).

Soliciting proxies

3.B.191(1) A person must not solicit proxies unless

(a) in the case of solicitation by or on behalf of the management of a provincial company, a management proxy circular, either as an appendix to or as a separate document accompanying the notice of the meeting, or

(b) in the case of any other solicitation, a dissident's proxy circular stating the purposes of the solicitation

is sent to the auditor of the company, to each participating policyholder or shareholder whose proxy is solicited and, if clause (b) applies, to the company.

3.B.191(2) A person who sends a management proxy circular or dissident's proxy circular must concurrently file with the Superintendent

(a) in the case of a management proxy circular, a copy of the circular together with a copy of the notice of meeting, form of proxy and any other documents for use in connection with the meeting, and

(b) in the case of a dissident's proxy circular, a copy of the circular together with a copy of the form of proxy and any other documents for use in connection with the meeting.

3.B.191(3) Subsection (1) does not apply in respect of the solicitation of proxies by the provision of a form of proxy pursuant to section 3.B.178.

3.B.191(4) On the application of an interested person, the Superintendent may, on such terms as the Superintendent thinks fit, exempt the interested person from any of the requirements of subsection (1) and section 3.B.190, and the exemption may be given retroactive effect.

3.B.191(5) The Superintendent must set out in the Gazette the particulars of exemptions granted under subsection (4) together with the reasons for granting the exemptions.

Attendance at meeting

3.B.192(1) A person who solicits a proxy and is appointed proxyholder must attend in person or cause an alternate proxyholder to attend every meeting in respect of which the proxy is valid, and the proxyholder or alternate proxyholder must comply with the directions of the participating policyholder or shareholder who executed the form of proxy.

3.B.192(2) A proxyholder or an alternate proxyholder has the same rights as the appointing participating policyholder or shareholder to speak at a meeting of policyholders or shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where the proxyholder or alternate proxyholder has conflicting instructions from more than one policyholder or shareholder, to vote at such a meeting in respect of any matter by way of a show of hands.

Duty of registrant

3.B.193(1) Shares of a provincial company that are registered in the name of a registrant or registrant's nominee and that are not beneficially owned by the registrant must not be voted unless the registrant sends to the beneficial owner

(a) forthwith after receiving them, a copy of the notice of the meeting, annual statement, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy, that were sent to shareholders by or on behalf of any person for use in connection with the meeting, and

(b) a written request for voting instructions, except where the registrant has already received written voting instructions from the beneficial owner.

3.B.193(2) A registrant must not vote or appoint a proxyholder to vote shares of a provincial company registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.

3.B.193(3) A person by or on behalf of whom a solicitation is made must, at the request of a registrant, forthwith provide the registrant, at that person's expense, with the necessary number of copies of the documents referred to in subsection (1)(a).

3.B.193(4) A registrant must vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

3.B.193(5) If requested by a beneficial owner, a registrant must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

3.B.193(6) The failure of a registrant to comply with any of subsections (1) to (5) does not render void any meeting of participating policyholders or shareholders or any action taken at the meeting.

3.B.193(7) Nothing in this Subpart gives a registrant the right to vote shares that the registrant is otherwise prohibited from voting.

Restraining order

3.B.194(1) If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in the document or necessary to make a statement contained in the document not misleading in the light of the circumstances in which it was made, an interested person or the Superintendent may apply to the Court and the Court may make any order it thinks fit, including, without limiting the generality of the foregoing,

(a) an order restraining the solicitation or the holding of the meeting, or restraining any person from implementing or acting on any resolution passed at the meeting, to which the form of proxy, management proxy circular or dissident's proxy circular relates,

(b) an order requiring correction of any form of proxy or proxy circular and a further solicitation, and

(c) an order adjourning the meeting.

3.B.194(2) Where a person other than the Superintendent is an applicant under subsection (1), the applicant must give to the Superintendent notice of the application and the Superintendent is entitled to appear and to be heard in person or by counsel.

DIRECTORS AND OFFICERS[15]

Duties

Duty to manage
3.B.195(1) Subject to this Act, the directors of a provincial company must manage or supervise the management of the business and affairs of the company.

Exception
3.B.195(2) The Superintendent, upon application from a provincial company, may in writing exempt, in whole or in part, on an annual basis, a provincial company from such of the requirements of section 3.B.195 to 3.B.253 as the Superintendent in his or her discretion deems appropriate and which in the opinion of the Superintendent would not impair the integrity of the provincial company or compromise policyholder and consumer protection, and the Superintendent shall provide particulars of his or her reasons which shall be available to the public.

3.B.195(3) Without limiting the generality of subsection (1), the directors of a provincial company must

(a) establish an audit committee and a conduct review committee;
(b) establish procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;
(c) in the case of a company that issues participating policies, establish, before issuing any participating policies, a policy for determining the dividends and bonuses to be paid to the participating policyholders;
(d) establish procedures to provide disclosure of information that this Act and the Regulations require to be disclosed;
(e) establish policies and procedures to ensure that the company applies prudent investment standards;
(f) appoint the actuary of the company.

3.B.195(4) Subsection (3)(a) does not apply to the directors of a provincial company where

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[15] **This section will require provincial input as it applies to exempting small family owned companies from the requirements of this section**

(a) all the voting shares of the company, other than directors' qualifying shares, if any, are beneficially owned by a financial institution incorporated by or under an Act of the Legislature,
(b) there are no participating policyholders, and
(c) the audit committee or the conduct review committee of the financial institution referred to in clause (a) performs for and on behalf of the company all the functions that would otherwise be required to be performed by the audit committee or conduct review committee of the company under this Act.

Duty of care

3.B.196(1) Every director and officer of a provincial company in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer must
(a) act honestly and in good faith with a view to the best interests of the company, and
(b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

3.B.196(2) Every director, officer and employee of a provincial company must comply with this Act, the Regulations, the company's instrument of incorporation and the by-laws of the company.

3.B.196(3) No provision in any contract, in any resolution or in the by-laws of a provincial company relieves any director, officer or employee of the company from the duty to act in accordance with this Act and the Regulations or relieves a director, officer or employee from liability for a breach of that duty.

Qualifications and Number of Directors

Minimum number of directors

3.B.197(1) [16] A provincial company must have at least 5 directors.

3.B.197(2) A majority of the directors must be ordinarily resident in Canada.

Disqualified persons

3.B.198(1) The following persons are disqualified from being directors of a provincial company:
(a) a person who is less than 18 years of age;
(b) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
(c) a person who has the status of an undischarged bankrupt;

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[16] Minimum number of directors currently subject to local variance

(d) a person who is not an individual;

(e) a person who holds shares of the company where, by section 3.B.143(6), the person is prohibited from exercising the voting rights attached to the shares;

(f) a person who is an officer, director or full time employee of an entity that holds shares of the company where, by section 3.B.143(6), the entity is prohibited from exercising the voting rights attached to the shares;

(g) a person who is a dependent adult as defined by the [applicable provincial act] or is the subject of a certificate of incapacity under that Act;

(h) a person employed in the public service of the Province or by a Provincial agency or Crown-controlled organization within the meaning of the *Financial Administration Act* and to which that Act applies, whether under a contract of service or a contract for services, whose substantive duties are directly concerned with the business or affairs of insurers, insurance agents or adjusters;

(i) a person who fails to meet any other qualification requirements of the by-laws;

(j) a person who, within the immediately preceding 5 years,

  (i) has been convicted of an indictable offence that is of a kind that is related to the qualifications, functions or duties of a corporate director, or

  (ii) has been convicted of an offence against this Act,

if the time for making an appeal has expired without an appeal having been made or the appeal has been finally disposed of by the courts or abandoned.

3.B.198(2) A shareholder of a provincial company is disqualified from being a participating policyholders' director of the company.

No requirement to hold shares or policies

3.B.199 A director of a provincial company is not required to hold shares of or a policy issued by the company.

Affiliated directors

3.B.200(1) In this section,

"not in good standing", in respect of a loan, means a loan in respect of which

(i) any payment of principal or interest is 90 days or more overdue,

(ii) interest is not being accrued on the books of the lender because it is doubtful whether the principal or interest will be paid or recovered, or

(iii) the rate of interest is reduced by the lender because the borrower is financially weak;

"significant borrower" means

(i) an entity that has outstanding indebtedness for money borrowed from the provincial company and from any affiliate of the company in an aggregate principal amount that exceeds 25% of the equity in the entity, or
(ii) an individual who has outstanding indebtedness for money borrowed from the provincial company and any affiliate of the company, other than a loan secured by a mortgage on the principal residence of that individual, in an aggregate principal amount that exceeds 25% of the individual's net worth.

"significant interest" means an interest in a class of shares of a body corporate where the aggregate of
(a) any shares of that class beneficially owned by a person, and
(b) any shares of that class beneficially owned by entities controlled by that person
exceeds 10% of all outstanding shares of that class of shares of the body corporate

"substantial investment" means an investment in a body corporate where
(a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by a person exceeds 10% of the voting rights attached to all of the outstanding shares of the body corporate, or
(b) the aggregate of any shares of the body corporate beneficially owned by a person represents ownership of more than 25% of the shareholders' equity of the body corporate, and
(c) includes an investment in an unincorporated body where a person beneficially owns more than 25% of all the ownership interests, however designated, into which the body is divided

3.B.200(2) Not more than 1/3 of the directors of a provincial company may be individuals who are, or within the preceding 2 years have been, remunerated officers, employees, insurance agents, insurance brokers or adjusters of the company or any of its affiliates.

3.B.200(3) No more than 2/3 of the directors may be affiliated directors.

3.B.200(4) An individual is an affiliated director of a provincial company for the purposes of subsection (3) if the individual
(a) is an officer or employee of the company or an affiliate of the company,
(b) has a significant interest in a class of shares of the company,
(c) has a substantial investment in an affiliate of the company,
(d) is a significant borrower in respect of the company,
(e) is a director, officer or employee of an entity that is a significant borrower in respect of the company,
(f) controls one or more entities of which the total indebtedness to the company or to an affiliate of the company would cause those entities, if treated as a single entity, to be a significant borrower of the company,

(g) provides goods or services to the company, or is a partner or an employee in a partnership that provides goods or services to the company or an officer or employee of, or a person who has a substantial investment in, a body corporate that provides goods or services to the company, if the total annual billings to the company in respect of the goods and services provided exceeds 10% of the total annual billings of the individual, partnership or body corporate, as the case may be,
(h) has a loan that is not in good standing from the company or from an affiliate of the company or is a director, an officer or an employee of, or an individual who controls, an entity that has a loan that is not in good standing from the company or from an affiliate of the company,
(i) is a professional adviser to the company,
(j) is an insurance agent, insurance broker or adjuster of the company,
(k) is the spouse of an individual described in any of clauses (a) to (j), or
(l) is a relative of an individual described in any of clauses (a) to (j) who has the same home as the individual.

3.B.200(5) Whether or not a person is affiliated with a provincial company is determined as of the day the notice of the annual meeting is sent to participating policyholders and shareholders, and that determination becomes effective on the day of that meeting, and a person is deemed to continue to be affiliated or unaffiliated, as the case may be, until the next annual meeting of participating policyholders and shareholders.

Election and Tenure of Directors

Number of directors

3.B.201(1) Subject to sections 3.B.197(1) and 3.B.206, the directors of a provincial company must, by by-law, determine the number of directors or the minimum and maximum number of directors, but no by-law that decreases the number of directors shortens the term of an incumbent director.

3.B.201(2) Subject to sections 3.B.197(1) and 3.B.206, if a provincial company has common shares and participating policyholders, the directors of the company must by by-law determine the number of directors, or the minimum and maximum number of directors, who are to be elected by the shareholders and the number, or the minimum and maximum number, who are to be elected by the participating policyholders.

3.B.201(3) A by-law made pursuant to subsection (1) or (2) that provides for a minimum and maximum number of directors may provide that the number of directors, shareholders' directors or participating policyholders' directors to be elected at any annual meeting of the participating policyholders and shareholders is to be the number fixed by the directors prior to the annual meeting.

3.B.201(4) The number of shareholders' directors and the number of participating policyholders' directors, whether determined by by-law or fixed by the directors, must each be at least _ of the total number of directors.

3.B.201(5) If the shareholders of a mutual provincial company are entitled to elect one or more directors of the company, not more than _ of the directors may be elected by the shareholders.

Changing number of directors

3.B.202(1) Subject to sections 3.B.197(1), 3.B.201(4) and 3.B.206, the directors of a provincial company may make, amend or repeal any by-law to increase or decrease the number of directors or the minimum or maximum number of directors, directors who are to be elected by the shareholders or directors who are to be elected by the participating policyholders.

3.B.202(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders, and the policyholders and shareholders may, by special resolution, confirm, amend or reject the by-law, amendment or repeal.

3.B.202(3) A by-law, or an amendment to or a repeal of a by-law, made under subsection (1) is not effective until it is confirmed or confirmed as amended by the policyholders and shareholders under subsection (2).

3.B.202(4) Where a special resolution referred to in subsection (2) so states, the directors may, without further approval of the policyholders or shareholders, revoke the special resolution.

Proposal to amend

3.B.203(1) Subject to subsection (2), a director or a policyholder or shareholder who is entitled to vote at an annual meeting of policyholders and shareholders of a provincial company may, in accordance with sections 3.B.160 and 3.B.161, make a proposal to make, amend or repeal the by-laws of the company referred to in section 3.B.202.

3.B.203(2) If a proposal is made to make, amend or repeal the by-laws of a provincial company to effect any of the changes referred to in section 3.B.202, notice of the meeting of policyholders and shareholders at which the proposal is to be considered must set out the proposal.

Term of directors

3.B.204(1) The provincial company may, by by-law, provide that the directors be elected a maximum of 3 years.

3.B.204(2) The term of a director ends at the close of the annual meeting of participating policyholders and shareholders held in the year in which the director's term ends.

3.B.204(3) A director who is not elected for an expressly stated term of office holds office for a one-year term.

Determining election of directors

3.B.205(1) Except where the by-laws of a provincial company provide for cumulative voting, the individuals who receive the greatest number of votes at an election of directors of a company, up to the number authorized to be elected, are the directors of the company.

3.B.205(2) If a provincial company has common shares and participating policyholders, a shareholder of the company

(a) is not entitled to vote for the participating policyholders' directors if the shareholder is not a participating policyholder, and

(b) is not entitled to vote any shares for the policyholders' directors.

3.B.205(3) If a provincial company has common shares and participating policyholders, a participating policyholder of the company

(a) is not entitled to vote for the shareholders' directors if the participating policyholder is not a shareholder, and

(b) is not entitled to vote as a participating policyholder for the shareholders' directors.

3.B.205(4) If at any election of directors referred to in subsection (1) 2 or more persons receive an equal number of votes and there are not sufficient vacancies remaining to enable all the individuals receiving an equal number of votes to be elected, the directors who receive a greater number of votes, or the majority of those directors, must, in order to complete the full number of directors, determine which of the persons receiving an equal number of votes are to be elected.

Cumulative voting

3.B.206 Where the by-laws provide for cumulative voting,

(a) in the case of a provincial company that has no participating policyholders, there must be a stated number of directors determined by by-law, and not a minimum and maximum number;

(b) in the case of a provincial company that has participating policyholders, there must be a stated number of shareholders' directors determined by by-law, and not a minimum and maximum number;

(c) each shareholder entitled to vote at an election of directors to be elected by cumulative voting has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected by cumulative voting, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;

(d) a separate vote must be taken with respect to each candidate nominated for a position that is to be filled by cumulative voting unless a resolution is passed unanimously permitting 2 or more persons to be elected by a single vote;

(e) if a shareholder has voted for more than one candidate without specifying the distribution of the votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates for whom the shareholder voted;

(f) if the number of candidates nominated exceeds the number of positions to be filled, the candidates who receive the least number of votes must be eliminated until the number of candidates remaining equals the number of positions to be filled;

(g) each director elected by cumulative voting ceases to hold office at the close of the next annual meeting of participating policyholders and shareholders following the director's election;

(h) a director elected by cumulative voting may not be removed from office if the votes cast against the removal would be sufficient to elect the director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors required by the by-laws to be elected by cumulative voting were then being elected;

(i) the number of directors required by the by-laws to be elected by cumulative voting may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the same number of directors required by the by-laws to be elected by cumulative voting were then being elected.

Class or series of shares

3.B.207 Nothing in this Act precludes the holders of any class or series of shares of a provincial company from having an exclusive right to elect one or more directors.

Re-election of directors

3.B.208 A director who has completed a term of office is, if otherwise qualified, eligible for re-election.

Incomplete Elections and Director Vacancies

Void election or appointment

3.B.209(1) If directors are not elected at a meeting of participating policyholders or shareholders, the incumbent directors continue in office until their successors are elected.

3.B.209(2) If a meeting of participating policyholders or shareholders fails to elect the number of directors required by this Act or the by-laws by reason of disqualification or the incapacity or death of one or more candidates, the directors elected at that meeting, if they constitute a quorum, may exercise all the powers of the directors of the provincial company pending the holding of a meeting of participating policyholders or shareholders in accordance with subsection (3).

3.B.209(3) If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by this Act or the by-laws, the directors then in office must forthwith call a special meeting of participating policyholders or shareholders, as the case may be, to fill the vacancy or vacancies, and if they fail to call a meeting or if there are no directors then in office, any participating policyholder or shareholder may call the meeting.

Ceasing to hold office

3.B.210(1) A director ceases to hold office
- (a) when the director's term of office expires,
- (b) when the director dies or resigns,
- (c) when the director becomes disqualified under section 3B.198 or ineligible to hold office pursuant to section 3.B.241(2), or
- (d) when the director is removed under section 3.B.211.

3.B.210(2) The resignation of a director of a provincial company becomes effective at the time a written resignation is sent to the company by the director or at the time specified in the resignation, whichever is later.

Removal of director

3.B.211(1) Subject to section 3B.206(1)(h) and this section, the participating policyholders or shareholders of a provincial company may by resolution at a special meeting remove any director or all the directors from office.

3.B.211(2) A shareholders' director may be removed only by a resolution of the shareholders at a meeting of shareholders or participating policyholders and shareholders.

3.B.211(3) A participating policyholders' director may be removed only by a resolution of the participating policyholders at a meeting of participating policyholders or participating policyholders and shareholders.

3.B.211(4) Where the holders of any class or series of shares of a provincial company have the exclusive right to elect one or more directors, a director so elected may be removed only by a resolution at a meeting of the shareholders of that class or series.

3.B.211(5) A vacancy created by the removal of a director may be filled at the meeting of the participating policyholders or shareholders at which the director is removed or, if not so filled, may be filled under section 328.

Statement of director

3.B.212(1) A director who

(a) resignes,
(b) receives a notice or otherwise learns of a meeting of participating policyholders or shareholders called for the purpose of removing the director from office, or
(c) receives a notice or otherwise learns of a meeting of directors or participating policyholders or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the director's resignation or removal or because the director's term of office has expired or is about to expire,

is entitled to submit to the provincial company a written statement giving the reasons for the resignation or the reasons why the director opposes any proposed action or resolution.

3.B.212(2) Where a director of a provincial company resigns as a result of a disagreement with the other directors or the officers of the company, the director must submit to the company and the Superintendent a written statement setting out the nature of the disagreement.

Circulation of statement

3.B.213(1) A provincial company must forthwith on receipt of a director's statement referred to in section 3.B.212(1) relating to a matter referred to in section 3.B.212(1)(b) or (c), or a director's statement referred to in section 3.B.212(2), send a copy of the director's statement

(a) to all other directors, and
(b) unless the directors of the company consider on reasonable grounds that sending the statement would materially and adversely affect the financial viability of the company, to each participating policyholder and shareholder entitled to receive notice of meetings under section 3.B.156(1)(a) or (b) and to the Superintendent, unless the statement is attached to a notice of a meeting.

3.B.213(2) Where the directors decide, under subsection (1)(b), not to send a copy of the statement to the participating policyholders and shareholders, they must forthwith notify the Superintendent in writing to that effect, and the Superintendent may, despite that decision, order the provincial company to send the statement to the participating policyholders and shareholders entitled to receive notice of meetings under section 3.B.156(1)(a) or (b).

3.B.213(3) No provincial company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (1).

Shareholders or policyholders filling vacancy

3.B.214 The by-laws of a provincial company may provide that a vacancy among the directors is to be filled only by vote of

(a) the participating policyholders or shareholders,
(b) the shareholders, if the vacancy occurs among the shareholders' directors,
(c) the participating policyholders, if the vacancy occurs among the participating policyholders' directors, or
(d) the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by the holders of that class or series.

Directors filling vacancy

3.B.215(1) Despite section 3.B.221(4)(b) but subject to subsection (2) and sections 3.B.214, 3.B.216 and 3.B.217, a quorum of directors may fill a vacancy among the directors except a vacancy among the directors resulting from a change in the by-laws by which the number or minimum number of directors is increased or from a failure to elect the number or minimum number of directors required by the by-laws.

3.B.215(2) Despite sections 3.B.210 and 3.B.221(4)(b), where by reason of a vacancy the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 3.B.197, 3.B.200(2) and (3) and 3.B.210(4), the directors who, in the absence of any by-law, would be empowered to fill that vacancy must do so forthwith.

Vacancy among shareholders' or policyholders' directors

3.B.216 Despite section 3.B.221(4)(b) but subject to sections 3.B.214 and 3.B.217, where a provincial company has shareholders' directors and participating policyholders' directors and a vacancy occurs among those directors,

(a) the remaining shareholders' directors or participating policyholders' directors, as the case may be, may fill the vacancy except a vacancy resulting from an increase in, or a failure to elect, the number or minimum number of shareholders' directors or participating policyholders' directors,
(b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to

meet any of the requirements of sections 3.B.197, 3.B.200(2) and (3) and 3.B.201(4), the other directors may fill that vacancy, and

(c) if there are no such remaining directors and clause (b) does not apply, any participating policyholder or shareholder may call a meeting of participating policyholders or shareholders for the purpose of filling the vacancy.

Class vacancy

3.B.217 Despite section 3.B.221(4)(b) but subject to section 3.B.214, where the holders of any class or series of shares of a provincial company have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) the remaining directors elected by the holders of that class or series may fill the vacancy except a vacancy resulting from an increase in, or a failure to elect, the number or minimum number of directors for that class or series,

(b) if there are no such remaining directors and, by reason of the vacancy, the number of directors or the composition of the board of directors fails to meet any of the requirements of sections 3.B.197, 3.B.200(2) and (3) and 3.B.201(4), the other directors may fill that vacancy, and

(c) if there are no such remaining directors and clause (b) does not apply, any holder of shares of that class or series may call a meeting of the holders of those shares for the purpose of filling the vacancy.

Unexpired term

3.B.218 Unless the by-laws otherwise provide, a director elected or appointed to fill a vacancy holds office for the unexpired term of the director's predecessor in office.

Meetings of the Board

Meeting of directors

3.B.219(1) Unless the by-laws otherwise provide, the directors may meet at any place.

Notice

3.B.219(2) Notice of meetings of the directors must be given in accordance with the by-laws.

Notice of meeting

3.B.220(1) A notice of a meeting of directors must specify each matter referred to in section 3.B.236(2) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not otherwise specify the purpose of or the business to be transacted at the meeting.

3.B.220(2) A director may in any manner waive notice of a meeting of directors and the attendance of a director at a meeting of directors is a waiver of notice of that meeting except where the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

3.B.220(3) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting was announced at the original meeting.

Quorum

3.B.221(1) The number of directors referred to in subsection (2) constitutes a quorum at any meeting of directors or a committee of directors and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

3.B.221(2) A quorum for a meeting of the directors is the greater of
  (a) three directors, or
  (b) a majority of the directors.

3.B.221(3) A quorum for a meeting of a committee of the directors is a majority of the directors comprising the committee.

3.B.221(4) Despite subsections (2) and (3), there is no quorum unless
  (a) at least one of the directors present at the meeting is not an affiliated director, and
  (b) at least one-half of the directors present at the meeting are ordinarily resident in Canada.

3.B.221(5) Any director present at a meeting of directors who is not present at any particular time during the meeting for the purposes of section 3.B.241(1) is considered as being present for the purposes of this section.

Resident Canadian majority

3.B.222 Despite section 3.B.221, the directors of a provincial company may transact business at a meeting of directors or of a committee of directors without the required proportion of directors who are ordinarily resident in Canada if
  (a) a director who is a resident in Canada unable to be present approves, in writing or by telephone or by any other means, the business transacted at the meeting, and
  (b) there would have been present the required proportion of directors who are ordinarily resident in Canada had that director been present at the meeting.

Electronic meeting

3.B.223(1) Subject to the by-laws of a provincial company, a meeting of directors or of a committee of directors may be held by means of telephonic, electronic or other communications facilities that permit all persons participating in the meeting to communicate with each other during the meeting.

3.B.223(2) A director participating in a meeting by any means referred to in subsection (1) is, for the purposes of this Act, present at that meeting.

Resolution instead of meeting

3.B.224(1) A resolution in writing signed by all the directors of a provincial company entitled to vote on that resolution at a meeting of directors or a committee of directors is as valid as if it had been passed at a meeting of directors or a committee of directors.

3.B.224(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of directors or a committee of directors of a provincial company and signed by all the directors entitled to vote at that meeting satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

Dissent of director

3.B.225(1) A director of a provincial company who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at that meeting unless

(a) the director requests that the director's dissent be entered or the director's dissent is entered in the minutes of the meeting,
(b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned, or
(c) the director sends the director's dissent by registered mail or delivers it to the head office of the company immediately after the meeting is adjourned.

3.B.225(2) A director of a provincial company who votes for or consents to a resolution is not entitled to dissent under subsection (1).

3.B.225(3) A director of a provincial company who is not present at a meeting at which a resolution is passed or action taken is deemed to have consented to the resolution unless, within 7 days after the director becomes aware of the resolution, the director

(a) causes the director's dissent to be placed with the minutes of the meeting, or
(b) sends the director's dissent by registered mail or delivers it to the head office of the company.

Meeting required by Superintendent

3.B.226(1) The Superintendent may, by notice in writing, require a provincial company to hold a meeting of directors of the company to consider the matters set out in the notice.

3.B.226(2) The Superintendent may attend and be heard at a meeting referred to in subsection (1).

By-laws

3.B.227(1) Unless this Act otherwise provides, the directors of a provincial company may by resolution make, amend or repeal any of the company's by-laws.

3.B.227(2) The directors must submit a by-law, or an amendment to or a repeal of a by-law, that is made under subsection (1) to the participating policyholders and shareholders at the next meeting of participating policyholders and shareholders, and the participating policyholders and shareholders may, by resolution, confirm, amend or reject it.

3.B.227(3) Unless this Act or the instrument of incorporation otherwise provides, a by-law, or an amendment to or a repeal of a by-law, is effective from the date of the resolution of the directors under subsection (1) until it is confirmed, confirmed as amended or rejected by the participating policyholders and shareholders under subsection (2) or until it ceases to be effective under subsection (4) and, where the by-law is confirmed, or confirmed as amended, it continues in effect in the form in which it was so confirmed.

3.B.227(4) If a by-law, or an amendment to or a repeal of a by-law, is rejected by the participating policyholders and shareholders, or is not submitted to the participating policyholders and shareholders by the directors as required under subsection (2), the by-law, amendment or repeal ceases to be effective from the date of its rejection or the date of the next meeting of participating policyholders and shareholders, as the case may be, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed, or confirmed as amended, by the participating policyholders and shareholders.

Policyholder or shareholder proposal of by-law

3.B.228 A participating policyholder or shareholder may, in accordance with sections 3.B.160 and 3.B.161, make a proposal to make, amend or repeal a by-law.

Superintendent to receive by-laws

3.B.229 A provincial company must provide the Superintendent with a copy of all by-laws of the provincial company, including amendments, within 20 days after they come into force.

Entitlement to copies of by-laws

3.B.230 Every participating policyholder and shareholder of a provincial company is entitled, on request made not more frequently than once in each calendar year, to receive, free of charge, one copy of the by-laws of the company.

Committees of the Board

Committees

3.B.231 The directors of a provincial company may appoint from their number, in addition to the committees referred to in section 3.B.195(3), such other committees as they deem necessary and, subject to section 3.B.236, delegate to those committees such powers of the directors, and assign to those committees such duties, as the directors consider appropriate.

Audit committee

3.B.232(1) The audit committee of a provincial company must consist of at least 3 directors.

3.B.232(2) Two-thirds of the members of the audit committee must be directors who are not persons affiliated with the provincial company, and none of the members of the audit committee may be officers, employees, insurance agents, adjusters or brokers of the company or of a subsidiary of the company.

3.B.232(3) The audit committee of a provincial company must

(a) review the annual financial statements of the company before the annual financial statements are approved by the directors,

(b) review the annual return of the company before the annual return is approved by the directors,

(c) ensure that appropriate internal control procedures are in place,

(d) review the investments and transactions that could adversely affect the well-being of the company that the auditor or any officer of the company brings to the attention of the committee,

(e) meet with the auditor to discuss the annual financial statements and the annual return and transactions referred to in this subsection,

(f) meet with the actuary of the company to discuss the parts of the annual financial statements and the annual return prepared by the actuary, and

(g) meet with the chief internal auditor of the company, or the officer or employee of the company acting in a similar capacity, and with management of the company, to discuss the effectiveness of the internal control procedures established for the company.

3.B.232(4) The audit committee of a provincial company must report on the annual financial statements and annual return to the directors before the directors approve the statements and return.

3.B.232(5) The audit committee of a provincial company may call a meeting of the directors of the company to consider any matter of concern to the committee.

Conduct review committee

3.B.233(1) The conduct review committee of a provincial company must consist of at least 3 directors.

3.B.233(2) Two-thirds of the members of the conduct review committee of a provincial company must be directors who are not persons affiliated with the company, and none of the members of the conduct review committee may be officers, employees, insurance agents, adjusters or brokers of the company or of a subsidiary of the company.

3.B.233(3) The conduct review committee of a provincial company must
(a) establish procedures for the review of transactions with related parties of the provincial company,
(b) review all proposed transactions with related parties of the company, and
(c) review the practices of the company to ensure that any transactions with related parties of the company that may have a material effect on the stability or solvency of the company are identified.

3.B.233(4) After each meeting of the conduct review committee of a provincial company, the committee must report to the directors of the company on all transactions and other matters reviewed by the committee.

Authority of Directors and Officers

Chief executive officer

3.B.234 The directors of a provincial company must appoint a chief executive officer who must be ordinarily resident in Canada and, subject to section 3.B.236, may delegate to that officer any of the powers of the directors.

Appointment of officers

3.B.235(1) The directors of a provincial company may, subject to the by-laws, designate the offices of the company, appoint officers to those offices, specify the duties of those officers and, subject to section 3.B.236, delegate to them powers to manage the business and affairs of the company.

3.B.235(2) A director of a provincial company may be appointed to any office of the company.

3.B.235(3) Two or more offices of a provincial company may be held by the same person.

Delegation

3.B.236(1) The directors of a provincial company may delegate any of their powers, except for the powers specified in subsection (2).

3.B.236(2) The directors of a provincial company may not delegate the power

(a) to submit to the participating policyholders or shareholders a question or matter requiring the approval of the participating policyholders or shareholders,
(b) to fill a vacancy among the directors or a committee of directors or in the office of auditor or actuary of the company,
(c) to issue or cause to be issued securities except in the manner and on terms authorized by the directors,
(d) to declare a dividend on shares or a policy dividend, bonus or other benefit payable to participating policyholders, other than a dividend on a group policy that is a participating policy,
(e) to authorize the redemption or acquisition of shares issued by the company pursuant to section 3.B.132 or 3.B.133,
(f) to authorize the payment of a commission on a securities issue,
(g) to approve a management proxy circular,
(h) to approve the annual financial statements of the company and any other financial statements issued by the company,
(i) to approve the annual return of the company, or
(j) to adopt, amend or repeal by-laws.

Remuneration

3.B.237(1) A provincial company must make by-laws respecting the remuneration of directors.

3.B.237(2) Subject to the by-laws, the directors of a provincial company may fix the remuneration of the officers and employees of the company.

Validity of acts

3.B.238(1) An act of a director or an officer of a provincial company is valid despite a defect in the director's qualification or an irregularity in the director's election or in the appointment of the director or officer.

3.B.238(2) An act of the board of directors of a provincial company is valid despite a defect in the composition of the board or an irregularity in the election of the board or in the appointment of a member of the board.

Right to attend meetings

3.B.239 A director of a provincial company is entitled to attend and to be heard at every meeting of participating policyholders or shareholders.

Conflicts of Interest

Disclosure of interest

3.B.240(1) A director or an officer of a provincial company who

(a) is a party to a material contract or proposed material contract with the company,
(b) is a director or an officer of any entity that is a party to a material contract or proposed material contract with the company, or
(c) has a material interest in any person who is a party to a material contract or proposed material contract with the company

must disclose in writing to the company or request to have entered in the minutes of the meetings of directors the nature and extent of that interest.

3.B.240(2) The disclosure required by subsection (1) must be made, in the case of a director,

(a) at the meeting of directors at which a proposed contract is first considered,
(b) if the director was not then interested in the proposed contract, at the first meeting after the director becomes so interested,
(c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested, or
(d) if a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.

3.B.240(3) The disclosure required by subsection (1) must be made, in the case of an officer who is not a director,

(a) forthwith after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors,
(b) if the officer becomes interested after a contract is made, forthwith after the officer becomes so interested, or
(c) if a person who is interested in a contract later becomes an officer, forthwith after the person becomes an officer.

3.B.240(4) If a material contract or proposed material contract is one that, in the ordinary course of business of the provincial company, would not require approval by the directors or the participating policyholders and shareholders, a director or an officer referred to in subsection (1) must disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of the director's or officer's interest forthwith after the director or officer becomes aware of the contract or proposed contract.

Voting

3.B.241(1) A director referred to in section 3.B.240(1) must not be present or vote on any resolution to approve the contract unless the contract is

(a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the provincial company or a subsidiary of the company,
(b) a contract relating primarily to the director's remuneration as a director or an officer, employee or agent of the provincial company, a subsidiary of the

company, an entity controlled by the company or an entity in which the company has a substantial investment,

(c) a contract for indemnity under section 3.B.251 or for insurance under section 3.B.252, or

(d) a contract with an affiliate of the provincial company.

3.B.241(2) Any director who knowingly contravenes subsection (1) ceases to hold office as director and is not eligible, for a period of 5 years after the date on which the contravention occurred, for election or appointment as a director of any financial institution that is incorporated by or under an Act of the Legislature.

Continuing disclosure

3.B.242 For the purposes of section 3.B.240(1), a general notice to the directors by a director or an officer declaring that the director or officer is a director or officer of an entity or has a material interest in a person and is to be regarded as interested in any contract made with that entity or person is a sufficient declaration of interest in relation to any contract so made.

Avoidance standards

3.B.243 A material contract between a provincial company and one or more of its directors or officers, or between a provincial company and another entity of which a director or an officer of the company is a director or an officer, or between a provincial company and a person in which the director or officer has a material interest, is neither void nor voidable

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that authorized the contract,

if the director or officer disclosed the interest in accordance with section 3.B.240(2), (3) or (4) or section 3.B.242 and the contract was approved by the directors or the participating policyholders and shareholders and the contract was reasonable and fair to the company at the time it was approved.

Application to Court

3.B.244 Where a director or an officer of a provincial company fails to disclose an interest in a material contract in accordance with sections 3.B.240 and 3.B.242, the Court may, on the application of the company, a shareholder of the company or a participating policyholder, set aside the contract on such terms as the Court thinks fit.

Liability and Indemnification

Liability for incorporation expenses

3.B.245(1) The directors of a provincial company who pay incorporation or organization expenses from the capital of the company or from interest on the capital without complying with section 3.B.28 are jointly and severally liable to the shareholders or incorporators of the company for the amount of those expenses.

3.B.245(2) A director of a provincial company who has satisfied a claim under this section is entitled to a contribution from the other directors of the company who are liable for the claim.

Liability for other matters

3.B.246(1) The directors of a provincial company who vote for or consent to a resolution of the directors authorizing the issue of a share in contravention of section 3.B.112(3) or the issue of subordinated indebtedness in contravention of section 3.B.129 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share or subordinated indebtedness had been issued for money on the date of the resolution.

3.B.246(2) The directors of a provincial company who vote for or consent to a resolution of the directors authorizing

(a) a purchase, redemption or acquisition of shares in contravention of section 3.B.132 or 3.B.133 ,
(b) a reduction of share capital in contravention of section 3.B.135,
(c) a payment of a dividend in contravention of section 3.B.139,
(d) a payment of an indemnity in contravention of section 3.B.251, or
(e) any transaction in contravention of this Act,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company and any amounts in relation to any loss suffered by the company.

Contribution

3.B.247(1) A director who has satisfied a judgment in relation to the director's liability under section 360 is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

3.B.247(2) A director who is liable under section 3.B.246 is entitled to apply to the Court for an order compelling a shareholder or other person to pay or deliver to the director

(a) any money or property that was paid or distributed to the shareholder or other person in contravention of section 3.B.132, 3.B.133,3.B.135, 3.B.139 or 3.B.251, or
(b) an amount equal to the value of the loss suffered by the provincial company as a result of any transaction that contravenes this Act.

3.B.247(3) Where an application is made to the Court under subsection (2), the Court may, where it is satisfied that it is equitable to do so,

(a) order a shareholder or other person to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other person in contravention of section 3.B.132, 3.B.135, 3.B.140 or 3.B.251 or any amount referred to in subsection (2)(b),

(b) order a provincial company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares, or

(c) make any further order it thinks fit.

Limitation

3.B.248 An action to enforce a liability imposed by section 3.B.246 may not be commenced after two years from the date of the resolution authorizing the action complained of.

Liability for wages

Reliance on statement

3.B.250 A director, an officer or an employee of a provincial company is not liable under section 3.B.196(1) or (3), 3.B.246 or 3.B.249 if the director, officer or employee relies in good faith on

(a) financial statements of the company represented to the director, officer or employee by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company, or

(b) a report of a professional adviser.

Indemnification of directors and officers

3.B.251(1) Except in respect of an action by or on behalf of the provincial company to procure a judgment in its favour, a provincial company may indemnify

(a) a director or an officer of the company,

(b) a former director or officer of the company, or

(c) any person who acts or acted at the company's request as a director or an officer of an entity of which the company is or was a shareholder or creditor

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a person referred to in any of clauses (a) to (c), if

(d) the director, officer or person acted honestly and in good faith with a view to the best interests of the company, and

(e) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the director, officer or person had reasonable grounds for believing that the impugned conduct was lawful.

3.B.251(2) A provincial company may, with the approval of the Court, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the company or entity to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the company or entity against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with that action if the person fulfils the conditions set out in subsection (1)(d) and (e).

3.B.251(3) Despite anything in this section, a person referred to in subsection (1) is entitled to indemnity from the provincial company in respect of all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the company or an entity if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceedings, and

(b) fulfils the conditions set out in subsection (1)(d) and (e).

3.B.251(4) A provincial company may, to the extent referred to in subsections (1) to (3) in respect of the person, indemnify the heirs or personal representatives of any person the company may indemnify pursuant to subsections (1) to (3).

Directors' and officers' insurance

3.B.252 A provincial company may purchase and maintain insurance for the benefit of any person referred to in section 3.B.251 against any liability incurred by the person

(a) in the capacity of a director or an officer of the company, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the company, or

(b)in the capacity of a director or an officer of another entity where the person acts or acted in that capacity at the company's request, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the entity.

Application to Court for indemnification

3.B.253(1) A provincial company or a person referred to in section 3.B.251 may apply to the Court for an order approving an indemnity under section 3.B.251(2) and the Court may so order and make any further order it thinks fit.

3.B.253(2) An applicant under subsection (1) must give the Superintendent written notice of the application and the Superintendent is entitled to appear and to be heard at the hearing of the application in person or by counsel.

3.B.253(3) On an application under subsection (1), the Court may order notice to be given to any interested person and that person is entitled to appear and to be heard at the hearing of the application in person or by counsel.

INSIDER TRADING

Definition

3.B.254(1) In this Part,

(a) **"business combination"** means an acquisition of all or substantially all the assets of one body corporate by another body corporate or an amalgamation of two or more bodies corporate;

(b) **"officer"**, in relation to a provincial company, means
  (i) a chief executive officer, president, vice-president, secretary, controller, treasurer and any other individual designated as an officer of the company by by-law or by resolution of the directors of the company, and
  (ii) any individual who performs functions for the company similar to those performed by an individual referred to in subclause (i);

(c) **"insider"** means, with respect to a provincial company,
  (i) the company,
  (ii) an affiliate of the company,
  (iii) a director or an officer of the company,
  (iv) a person who has a substantial investment in the company,
  (v) a person employed or hired by the company, and
  (vi) a person who receives specific confidential information from a person referred to in this clause, including a person referred to in this subclause, and who has knowledge that the person giving the information is a person described in this clause.

3.B.254(2) For the purposes of this Part,
  (a) if a body corporate becomes an insider of a provincial company or enters into a business combination with a provincial company, or
  (b) if a provincial company becomes an insider of a body corporate, or enters into a business combination with a body corporate,
every director or officer of the body corporate is deemed to have been an insider of the company for the previous six months or for such shorter period as the director or officer was a director or officer of the body corporate.

Application

3.B.255 This Part applies to a transaction in a security of a provincial company or any of its affiliates only if the provincial company is not a reporting issuer.

Civil liability

3.B.256(1) An insider who, in connection with a transaction in a security of the provincial company or any of its affiliates, makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security is

(a) liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction, and

(b) accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

3.B.256(2) An action to enforce a right created by subsection (1) may not be commenced after a period of 2 years after discovery of the facts that gave rise to the cause of action.

AUDITORS

Definition

3.B.257 In this Part, **"designated individual"** means the individual that is required to be designated by an auditor under section 3.B.259.

Appointment of auditor

3.B.258(1) The shareholders and participating policyholders of a provincial company must, by ordinary resolution at each annual meeting of participating policyholders and shareholders, appoint a person as auditor to hold office until the close of the next annual meeting.

3.B.258(2) The remuneration of an auditor may be fixed by ordinary resolution of the participating policyholders and shareholders but, if not so fixed, must be fixed by the directors.

Designated individual

3.B.259 If the auditor of a provincial company is not an individual, the auditor must designate an individual who is responsible for acting on behalf of the auditor.

Qualifications of auditor

3.B.260(1) The designated individual or individual who is the auditor of a provincial company must

(a) be a member in good standing of an institute or association of accountants incorporated by or under an Act,

(b) have at least 5 years' experience in performing audits of a financial institution, and
(c) be ordinarily resident in Canada.

3.B.260(2) The auditor of a provincial company, any partner in a firm that is the auditor of a provincial company and the designated individual of an auditor must be independent of the company.

3.B.260(3) For the purposes of subsection (2),
(a) independence is a question of fact, and without limiting the generality of the provision
(b) a person is deemed not to be independent of a provincial company if that person
  (i) is a director or an officer or employee of the company or of any affiliate of the company or is a business partner of any director, officer or employee of the company or of any affiliate of the company,
  (ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the company or of any affiliate of the company, or
  (iii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any affiliate of the company within the 2 years immediately preceding the person's or person's firm's proposed appointment as auditor of the company or the individual's proposed designation by the auditor, other than an affiliate that is a subsidiary of the company acquired pursuant to a loan workout or through a realization of security.

3.B.260(4) No person is disqualified from acting as the auditor of a provincial company or from being a designated individual solely on the grounds that the person or, if the person is a firm, a partner of the firm is a policyholder in the company.

Revocation of auditor's appointment
3.B.261(1) The directors of a provincial company may revoke the appointment of the auditor of the company.

3.B.261(2) The directors of a provincial company must revoke the appointment of its auditor if
  (a) the auditor no longer meets the requirements of section 3.B.260 and the auditor does not resign, or
  (b) the auditor's designated individual no longer meets the requirements of section 3.B.260.
  and the auditor does not replace its designated individual with an individual who meets the requirements of section 3.B.260.

3.B.261(3) The Superintendent may revoke the appointment of an auditor of a provincial company if the Superintendent is satisfied that the auditor or the auditor's designated individual no longer meets the requirements of section 3.B.260.

3.B.261(4) The participating policyholders and shareholders of a provincial company may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

3.B.261(5) Nothing in this section permits the revocation of the appointment of an auditor if the auditor was appointed by the Court unless the Court provides otherwise.

Declaration of vacancy by Court

3.B.262 Any interested person may apply to the Court for an order declaring that an auditor or its designated individual no longer meets the requirements of section 3.B.260 and declaring the office of auditor to be vacant.

Ceasing to hold office

3.B.263(1) The office of an auditor of a provincial company becomes vacant when

(a)the auditor resigns,
(b) if the auditor is an individual, the individual dies,
(c) if the auditor is not an individual, the auditor is dissolved,
(d) the appointment of the auditor is revoked, or
(e) the office of auditor is declared to be vacant under section 3.B.262.

Resignation

3.B.263(3) The resignation of an auditor becomes effective at the time a written resignation is sent to the provincial company or at the time specified in the resignation, whichever is later.

Filling vacancy

3.B.264(1) If the office of auditor of a provincial company becomes vacant, the participating policyholders and shareholders or, if the by-laws permit, the directors must forthwith fill the vacancy.

3.B.264(2) An auditor appointed under subsection (1) holds office for the unexpired term of office of the predecessor auditor.

3.B.264(3) If a replacement auditor is not appointed in accordance with subsection (1), the Court may appoint an auditor to hold office for the unexpired term of the predecessor auditor and fix the remuneration of the auditor on the application of

(a) a participating policyholder or shareholder of the provincial company, or
(b) in addition to the persons referred to in clause (a), the Executive Director under the *Securities Act* if the provincial company is a reporting issuer.

Statement of auditor

3.B.265(1) An auditor of a provincial company who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of directors or participating policyholders and shareholders called for the purpose of revoking the appointment of the auditor, or

(c) receives a notice or otherwise learns of a meeting of directors or participating policyholders and shareholders at which another person is to be appointed in the auditor's place, whether because of the auditor's resignation or revocation of appointment or because the auditor's term of office has expired or is about to expire,

must submit to the company and the Superintendent a written statement giving the reasons for the resignation or the reasons why, in the auditor's opinion, the auditor's appointment is to be revoked or not renewed.

3.B.265(2) If the reasons in the auditor's statement are based on a disagreement between the auditor and the directors or officers, the provincial company must forthwith send a copy of the statement to each participating policyholder and each voting shareholder.

Duty of replacement auditor

3.B.266(1) Where an auditor of a provincial company has resigned or the appointment of an auditor has been revoked, or where the term of the auditor has expired or is about to expire and the auditor is not to be reappointed, no person may accept an appointment or consent to be appointed as auditor of the company until

(a) the person has requested and received from the predecessor auditor the written statement under section 3.B.265(1), or

(b) the person has requested from the predecessor auditor the written statement under section 265(1) and the person has not received the statement within 15 days after making the request.

3.B.266(2) If the predecessor auditor's statement is not received by the person who will be the replacement auditor within 15 days after the request is made, the person must promptly notify the Superintendent and, if the Superintendent has received the written statement, the Superintendent must provide it to the person.

Right to attend meetings

3.B.267(1) The auditor of a provincial company is entitled to receive reasonable notice of every meeting of participating policyholders or shareholders, directors, audit committee and conduct review committee of the company and, at the expense of the company, to attend and be heard at those meetings on matters relating to the duties of the auditor.

3.B.267(2) If a director, participating policyholder or shareholder of a provincial company, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than 10 days before a meeting of participating policyholders or shareholders to an auditor or former auditor of the provincial company that the director, policyholder or shareholder wishes the auditor to attend at the meeting, the auditor or former auditor must attend the meeting at the expense of the company and answer questions relating to the auditor's or former auditor's duties as auditor.

3.B.267(3) An auditor is not required to comply with subsection (2) where the audit committee is satisfied that the request under subsection (2) is made primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the provincial company or any of its directors, officers or security holders, or for a purpose that is not related in any significant way to the duties of the auditor.

3.B.267(4) A director, participating policyholder or shareholder who gives notice under subsection (2) must send concurrently a copy of the notice to the provincial company, and the company must forthwith send a copy of the notice to the Superintendent regardless of any decision of the audit committee under subsection (3).

3.B.267(5) The Superintendent may attend and be heard at any meeting referred to in subsection (2).

Right to information

3.B.268(1) On the request of the auditor of a provincial company, the present or former directors, officers, employees or representatives of the company and any former auditors of the company must, to the extent that they are reasonably able to do so,

(a) obtain or permit access to such records, assets and security held by the company or any entity in which the company has a substantial investment, and

(b) provide such information and explanations

as are, in the opinion of the auditor, necessary to enable the auditor to perform the duties of auditor of the company.

3.B.268(2) A person who in good faith makes an oral or written communication under subsection (1) is not liable in any civil action arising from the communication's having been made.

Auditor's report

3.B.269(1) The auditor of a provincial company must make a report in writing on the annual financial statement of the company at the annual meeting of the participating policyholders and shareholders of the company.

3.B.269(2) In each report referred to in subsection (1), the auditor must include such remarks as the auditor considers necessary when

(a) the auditor's examination conducted to report on the annual financial statement has not been made in accordance with the auditing standards referred to in section 3.B.106,

(b) the annual statement has not been prepared on a basis consistent with that of the preceding financial year, or

(c) the annual statement does not present fairly, in accordance with the accounting principles referred to in section 3.B.106, the financial position of the provincial company as at the end of the financial year to which it relates or the results of the operations or changes in the financial position of the company for that financial year.

Requiring new financial statements
3.B.270 If the Superintendent is satisfied that the financial statements and reports of a provincial company that have been sent to the Superintendent, policyholders, shareholders or the public were not prepared in accordance with the standards set out in section 3.B.106, the Superintendent may require the company

(a) to prepare new financial statements or reports that are prepared in accordance with the standards set out in section 3.B.106, and

(b) to send the new financial statements or reports to the persons specified by the Superintendent.

Report on director's statement
3.B.271(1) The auditor of a provincial company must, if required by the participating policyholders and shareholders, audit and report to them on any financial statement submitted to them by the directors, and the report must state whether, in the auditor's opinion, the financial statement presents fairly the information required by the participating policyholders and shareholders.

3.B.271(2) A report of the auditor made under subsection (1) must be attached to the financial statement to which it relates and a copy of the statement and report must be sent by the directors to every participating policyholder, to every shareholder and to the Superintendent.

Report to officers
3.B.272(1) The auditor of a provincial company must report in writing to the audit committee of the company

(a) any material transactions or conditions affecting the well-being of the company that have come to the auditor's attention and that in the auditor's opinion are not satisfactory and require rectification, or

(b) any material transaction that, in the auditor's opinion, was not within the powers of the company when the transaction occurred.

3.B.272(2) An auditor is not required to make a report under subsection (1) unless the auditor becomes aware of the transactions or conditions in the ordinary course of the auditor's duties.

3.B.272(3) If the auditor of a provincial company makes a report under subsection (1), the auditor must also transmit the report, in writing, to the chief executive officer and the actuary of the company and to the Superintendent.

Auditor of subsidiaries
3.B.273 A provincial company must take all necessary steps to ensure that its auditor or, with the permission of the Superintendent, another auditor selected by the company, is duly appointed as the auditor of each of its subsidiaries unless
(a) in the case of a subsidiary that carries on its operations in a country other than Canada, the laws of that country do not permit the appointment of the auditor of the provincial company as the auditor of that subsidiary, or
(b) the provincial company's auditor is of the opinion that the total assets of the subsidiary are not a material part of the total assets of the company.

Calling meeting
3.B.274(1) The auditor of a provincial company or a member of the audit committee may call a meeting of the audit committee.

3.B.274(2) The chief internal auditor of a provincial company or any officer or employee of the company acting in a similar capacity must, at the request of the auditor of the company and on reasonable notice, meet with the auditor.

Notice of errors
3.B.275(1) A director or an officer of a provincial company must forthwith notify the audit committee, the auditor and, if applicable, a former auditor of the company of any error or misstatement of which the director or officer becomes aware in an annual financial statement or other statement on which the auditor or former auditor has reported.

3.B.275(2) If the auditor or a former auditor of a provincial company is notified or becomes aware of an error or misstatement in an annual financial statement or other statement on which the auditor or former auditor reported,
(a) the auditor must, if in the auditor's opinion the error or misstatement is material, inform each director of the company, the actuary, former auditor, if applicable, and the Superintendent, or
(b) the former auditor must, if in the former auditor's opinion the error or misstatement is material, inform each director of the company, the current auditor and the Superintendent.

3.B.275(3) Where under subsection (2) the auditor or a former auditor of a provincial company informs the directors of an error or misstatement in an annual financial statement or other statement, the directors must
(a) prepare and issue a revised annual financial statement or other statement, or

(b) inform the Superintendent and the participating policyholders and shareholders of the company of the impact of the error or misstatement.

Auditor's report and extended examination

3.B.276(1) The Superintendent may, in writing, require that the auditor of a provincial company report to the Superintendent on the extent of the auditor's procedures in the examination of the annual return and may, in writing, require that the auditor enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditor must comply with the requirement of the Superintendent and report to the Superintendent.

3.B.276(2) The Superintendent may, in writing, require that the auditor of a provincial company make a particular examination relating to the adequacy of the procedures adopted by the company for the safety of its creditors, policyholders and shareholders, or any other examination that, in the Superintendent's opinion, the public interest may require, and the auditor must comply with the requirement and report to the Superintendent.

3.B.276(3) The expenses incurred as a result of the auditor's performing duties under subsections (1) and (2) are payable by the provincial company on being approved in writing by the Superintendent.

Protection from liability

3.B.277 An oral or written statement or report made under this Act by the auditor or a former auditor of a provincial company has qualified privilege.

ACTUARIES

Definition

3.B.278 In this Part, **"designated individual"** means the individual that is required to be designated by an actuary under section 3.B.280.

Notice of appointment

3.B.279 A provincial company must, within 7 days after the directors appoint a person to be the actuary of the company in accordance with section 3.B.195(3)(f), notify the Superintendent in writing of the appointment.

Designated individual

3.B.280 If the actuary of a provincial company is not an individual, the actuary must designate an individual who is responsible for acting on behalf of the actuary.

Qualifications of actuary

3.B.281 A designated individual or an individual who is the actuary of a provincial company must
- (a) be ordinarily resident in Canada, and
- (b) be a Fellow in good standing of the Canadian Institute of Actuaries.

Certain officers precluded

3.B.282(1) The chief executive officer or chief operating officer or a person performing similar functions may not be appointed or hold the position of actuary of a provincial company unless authorized in writing by the Superintendent.

3.B.282(2) An authorization under subsection (1) ceases to be in effect on the day specified in the authorization but not later than the day that is six months after it is issued, and a person appointed or holding the position of actuary pursuant to the authorization may not hold that position after that day.

Chief financial officer

3.B.283(1) The chief financial officer or a person performing similar functions may not be appointed as or hold the position of actuary of a provincial company unless
- (a) the audit committee of the company has provided the Superintendent with a written statement indicating that it is satisfied that the duties of both positions in the company will be adequately performed and that the actuarial duties will be performed in an independent manner, and
- (b) the appointment or holding of the position is authorized by the Superintendent.

3.B.283(2) An authorization under subsection (1)(b) may contain limitations and conditions, including a limitation on the time during which the person referred to in the authorization may hold the position of actuary of the provincial company.

3.B.283(3) A person holding the position of actuary pursuant to an authorization under subsection (1)(b) may not hold that position after the time limit referred to in subsection (2).

Revocation of actuary's appointment

3.B.284(1) The directors of a provincial company may revoke the appointment of the actuary of the company.

3.B.284(2) The directors of a provincial company must revoke the appointment of its actuary if
- (a) the actuary no longer meets the requirements of section 3.B.281 and does not resign,
- (b) the actuary's designated individual no longer meets the requirements of section 3.B.281 and the actuary does not replace its designated individual with an individual who meets the requirements of section 3.B.281.

3.B.284(3) The Superintendent may revoke the appointment of an actuary of a provincial company if the Superintendent is satisfied that the actuary or the actuary's designated individual no longer meets the requirements of this Part.

3.B.284(4) Nothing in this section permits the revocation of the appointment of an actuary if the actuary was appointed by the Court unless the Court provides otherwise.

Declaration of vacancy by Court

3.B.285 Any interested person may apply to the Court for an order declaring that an actuary or its designated individual no longer meets the requirements of section 3.B.281 and declaring the office of actuary to be vacant.

Ceasing to hold office

3.B.286(1) The office of an actuary of a provincial company becomes vacant when
(a) the actuary resigns,
(b) if the actuary is an individual, the individual dies,
(c) if the actuary is not an individual, the actuary is dissolved,
(d) the appointment of the actuary is revoked, or
(e) the office of actuary is declared to be vacant under section 3.B.285.

3.B.286(2) The resignation of an actuary becomes effective at the time a written resignation is sent to the provincial company or at the time specified in the resignation, whichever is later.

Filling vacancy

3.B.287 When a vacancy occurs in the office of the actuary of a provincial company, the directors must forthwith
(a) submit a written statement to the Superintendent of the circumstances and reasons why, in the directors' opinion, the office of the actuary became vacant, and
(b) fill the vacancy.

Statement of actuary

3.B.288 An actuary of a provincial company who resigns or whose appointment is revoked must submit a written statement of the circumstances and reasons why the actuary resigned or why, in the actuary's opinion, the actuary's appointment was revoked to
(a) the directors of the company,
(b) the Superintendent, and
(c) the replacement actuary of the company when a request for the statement is made by the replacement actuary.

Duty of replacement actuary

3.B.289(1) If an actuary of a provincial company has resigned or the appointment of an actuary has been revoked, the replacement actuary must promptly after being appointed request the previous actuary to provide the replacement actuary with a copy of the statement referred to in section 3.B.288.

3.B.289(2) If the replacement actuary does not receive the statement within 15 days after making the request, the replacement actuary must immediately notify the Superintendent that the statement has not been received and, if the Superintendent has received the statement, the Superintendent must provide it to the actuary.

Right to information

3.B.290(1) On the request of the actuary of a provincial company, the present or former directors, officers, employees or representatives of the company, any former actuary of the company and of any of the company's subsidiaries and holding bodies corporate must, to the extent that they are reasonably able to do so,

(a) obtain or permit access to such records held by the company or any of its subsidiaries or holding bodies corporate, and

(b) provide such information and explanations

as are, in the opinion of the actuary, necessary to enable the actuary to perform the duties of actuary of the company.

3.B.290(2) A person who in good faith makes an oral or written communication under subsection (1) is not liable in any civil action arising from having made the communication.

Actuary's valuation

3.B.291(1) The actuary of a provincial company must value

(a) the actuarial and other policy liabilities of the company as at the end of a financial year, and

(b) any other matter specified in any direction made by the Superintendent.

3.B.291(2) An actuary who is a Fellow of the Canadian Institute of Actuaries must ensure that the valuation is in accordance with generally accepted actuarial practices with any modification established by the Superintendent under section 3.B.106.

Special valuation

3.B.292(1) The Superintendent may appoint an individual as an actuary to value the matters referred to in section 3.B.291(1)(a) or (b) in relation to a provincial company if the Superintendent is of the opinion that the appointment is necessary.

3.B.292(2) The remuneration and expenses incurred in carrying out a valuation under subsection (1) are payable by the provincial company on being approved in writing by the Superintendent.

Actuary's report
3.B.293(1) The actuary of a provincial company must, not less than 21 days before the date of the annual meeting of the participating policyholders and shareholders of the company, make a report to them on the valuation made under section 3.B.291 and on any other matter that is prescribed.

3.B.293(2) In each report required under subsection (1), the actuary must state whether, in the actuary's opinion, the annual statement presents fairly the results of the valuation made under section 3.B.291.

Report to directors
3.B.294(1) The directors of the company or, where the directors so choose, the audit committee of the company must meet with the actuary of a provincial company at least once during each financial year.

3.B.294(2) The actuary must report at the meeting
(a)on the financial position of the provincial company, and
(b)if directed to do so by the Superintendent, on the expected future financial condition of the company.

Report on matters requiring rectification
3.B.295 The actuary of a provincial company must report in writing to the directors, chief executive officer and chief financial officer of the company and to the Superintendent any matters that have come to the actuary's attention in the course of carrying out the actuary's duties and that in the actuary's opinion have material adverse effects on the financial condition of the company and require rectification.

Actuary's procedures
3.B.296(1) The Superintendent may, in writing, require that the actuary of a provincial company report to the Superintendent on the extent of the actuary's procedures used in valuing the actuarially based liability figures contained in the annual return and may, in writing, require that the actuary enlarge or extend the scope of that valuation or direct that any other particular procedure be performed in any particular case, and the actuary must comply with the requirement of the Superintendent and report to the Superintendent.

3.B.296(2) The expenses incurred as a result of the actuary's performing duties under subsection (1) are payable by the provincial company on being approved in writing by the Superintendent.

Protection from liability
3.B.297(1) An oral or written statement or report made under this Act by the actuary or former actuary of a provincial company has qualified privilege.

3.B.297(2) The actuary or former actuary of a company who in good faith makes an oral or written statement or report under section 3.B.288 or 3.B.295 is not liable in any civil action for damages attributable to the actuary's or former actuary's having made the statement or report.

Regulations
3.B.298 The Minister may make Regulations providing for matters to be included in an actuary's report under section 3.B.293.

Sub-Part C: ADEQUACY OF CAPITAL AND LIQUIDITY

3.C.1(1) A provincial company must, in relation to its operations,
(a) maintain adequate capital and adequate and appropriate forms of liquidity, and
(b) comply with any regulations in relation to capital and liquidity.

3.C.1(2) The Lieutenant Governor in Council may make regulations respecting the maintenance by provincial companies of
(a) adequate capital, and
(b) adequate and appropriate forms of liquidity.

3.C.1(3) The regulations may specify different requirements for different classes of provincial companies.

3.C.1(4) Even though a provincial company is complying with regulations made under subsection (2), the Minister may, by order, direct the company
(a) to increase its capital, or
(b) to provide additional liquidity in the form and amounts that the Minister requires.

3.C.1(5) A provincial company must comply with an order made under subsection (4) within the time the Minister specifies in the order.

Sub-Part D: INVESTMENTS

Definitions

3.D.1 In this Subpart,

(a) **"commercial loan"** means

- (i) any loan other than
  - (A) loans to an individual in an aggregate prescribed amount or less,
  - (B) a loan to the government of Canada or a province, a municipality or any of their agencies, or to the government of a foreign country or any of its agencies, or to a prescribed international agency,
  - (C) a loan that is guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in paragraph (B),
  - (D) a loan that is secured by a mortgage on real property
    - (i) where the mortgage is on residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made, or
    - (ii) where the mortgage is on real property other than residential property and the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, does not exceed 75% of the value of the property at the time the loan is made and the property provides an annual income sufficient to pay all annual expenses related to the property, including the payments owing under the mortgage and the mortgages having an equal or prior claim against the property,
  - (E) a loan that is secured by a mortgage on real property where the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, exceeds 75% of the value of the property at the time the loan is made if repayment of the amount of the loan that exceeds 75% of the value of the property is guaranteed or insured by an insurer approved by the Minister or a government agency, or
  - (F) a loan that
    - (i) is fully secured by a deposit with any deposit-taking institution,
    - (ii) is fully secured by debt obligations guaranteed by any financial institution other than the provincial company or an affiliate of the company, or
    - (iii) is fully secured by a guarantee of a financial institution other than the provincial company or an affiliate of the company,

    or
  - (G) an advance on the security of or against the cash surrender value of a policy,

- (ii) an investment in debt obligations, other than

(A) debt obligations that are
  (i) guaranteed by any financial institution other than the provincial company or an affiliate of the company,
  (ii) fully secured by deposits with any deposit-taking institution, or
  (iii) fully secured by debt obligations that are guaranteed by any financial institution other than the provincial company or an affiliate of the company,
(B) debt obligations issued by the government of Canada or a province, a municipality or any of their agencies, or by the government of a foreign country or any of its agencies, or by a prescribed international agency,
(C) debt obligations that are guaranteed by, or fully secured by securities issued by, a government, a municipality or an agency referred to in paragraph (B), or
(D) debt obligations that are widely distributed,

(iii) an investment in shares of a body corporate or ownership interests in an unincorporated body, other than
  (A) shares or ownership interests that are widely distributed, or
  (B) participating shares,
(iv) a deposit with any deposit-taking institution, and
(v) any other prescribed form of financing;

(b) **"connected"** means connected as defined in the regulations;

(c) **"debt obligation"** means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured;

(d) **"investment"** includes a loan to a person;

(e) **"loan"** includes an acceptance, an advance on the security of or against the cash surrender value of a policy, endorsement, letter of credit or other guarantee, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit but does not include investments in securities;

(f) **"participating share"** means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution;

(g) **"significant interest"** means an interest in a class of shares of a body corporate where the aggregate of
  a) any shares of that class beneficially owned by a person, and

b) any shares of that class beneficially owned by entities controlled by that person exceeds 10% of all outstanding shares of that class of shares of the body corporate

(h) **"widely distributed"** with respect to securities of a body corporate means
(i) securities issued by way of a prospectus and traded on a recognized stock exchange, or
(ii) securities issued to more than 25 investors within a 6-month period, no one of which holds more than 10% of the total amount of the securities issued and of which, on an ongoing basis, the body corporate does not own more than 10% of the securities outstanding.

Prudent investment standards

3.D.2(1) A provincial company must adhere to prudent investment standards in making investment decisions and in managing its total investments.

3.D.2(2) For the purposes of this Act, prudent investment standards are those which, in the overall context of an investment portfolio, a reasonable and prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

3.D.2(3) The fact that a provincial company is in compliance with the other provisions of this Act relating to investments does not of itself mean that the company is in compliance with subsection (1).

Policies and procedures

3.D.3(1) The directors of a provincial company must establish policies and procedures to ensure that the company applies prudent investment standards in making investment decisions and in managing its total investments.

3.D.3(2) The directors must review the procedures established under subsection (1) at least once each year.

Prohibited investments

3.D.4(1) No provincial company may directly or indirectly make loans to or other investments in
(a) any person, or
(b) any 2 or more persons that to the knowledge of the company are connected,
if the outstanding balance of principal and interest of loans for the person or the connected persons, together with the book value of investments in the person or connected persons, would exceed $500 000 or the prescribed percentage of the company's assets, whichever is greater.

3.D.4(2) This section does not apply so as to restrict a provincial company from acquiring or making investments in

(a) a security issued or guaranteed by the government of Canada or any province,
(b) a mortgage that is
(i) insured under the *National Housing Act* (Canada) or through an agency of the government of Canada or a province, or
(ii) insured by an insurer approved by the Minister,
(c) an unincorporated body referred to in section 3.D.6(2),
(d) a body corporate referred to in section 3.D.6(3), or
(e) other prescribed investments.

Restriction on residential mortgages

3.D.5(1) No provincial company may make a loan in Canada on the security of residential property in Canada for the purpose of purchasing, renovating or improving that property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of mortgages having an equal or prior claim against the property, would exceed 75% of the value of the property at the time of the loan.

3.D.5(2) Subsection (1) does not apply in respect of

(a) a loan if repayment of the amount of the loan that exceeds the maximum set out in subsection (1) is guaranteed or insured by the Government of Alberta, the Government of Canada, the government of another province, an agency of any of those governments or an insurance policy issued by a licensed insurer;
(b) the acquisition by the company from an entity of securities issued or guaranteed by the entity that are secured on any residential property, whether in favour of a trustee or otherwise, or the making of a loan by the company to the entity against the issue of such securities, or
(c) a loan secured by a mortgage where
  (i) the mortgage is taken back by the company on a property disposed of by the company, including where the disposition is by way of a realization of a security interest, and
  (ii) the mortgage secures payment of an amount payable to the company for the property.

Limitation on ownership of unincorporated body

3.D.6(1) Subject to subsections (2) and (4), no provincial company may beneficially own more than a 10% interest in an unincorporated body.

3.D.6(2) Subsection (1) does not apply where the unincorporated body is carrying on a business that may be carried on by a body corporate referred to in section 3.D.7(3) and is carrying on that business in the same way as if it were such a body corporate.

3.D.6(3) For the purposes of subsection (1), an interest beneficially owned by a subsidiary of a provincial company is deemed to be beneficially owned by the company.

3.D.6(4) Despite subsection (1), a provincial company may, through realization of a security interest held by the company or, subject to the approval of the Minister, by means of a loan workout procedure, beneficially own more than a 10% interest in an unincorporated body, but the company must dispose of the excess interest within
(a) 2 years after acquiring the excess interest, or
(b) any longer period the Minister allows.

Limitation on shareholding

3.D.7(1) Subject to this section and except as otherwise prescribed, no provincial company may have a substantial investment, as defined in Section 3.B.200, in a body corporate.

3.D.7(2) Despite subsection (1), a provincial company may, through realization of a security interest held by the company or, subject to the approval of the Minister, by means of a loan workout procedure, have a substantial investment in a body corporate, but the company must dispose of the excess shares that give the company a substantial investment within
(a) 2 years after acquiring the excess shares, or
(b) any longer period the Minister allows.

3.D.7(3) Despite subsections (1) and (2) and except as otherwise prescribed, a provincial company may have a substantial investment in any of the following bodies corporate:
(a) a bank;
(b) a loan corporation or trust corporation incorporated by or under an Act of Canada or a province;
(c) with the approval of the Minister, an extra-provincial company or an insurer formed by or under an Act of Canada;
(d) with the approval of the Minister, a foreign financial institution;
(e) a prescribed body corporate.

3.D.7(4) A provincial company must not have a substantial investment in a body corporate referred to in subsection (3) if that body corporate has a substantial investment in another body corporate that is not a body corporate referred to in subsection (3).

Duty to provide information

3.D.8 If a provincial company acquires control of an unincorporated body referred to in section 420(2), or of a body corporate referred to in section 3.D.6(3), the provincial company must provide the Minister with any information respecting the unincorporated body or body corporate that the Minister requires.

Divestment order

3.D.9(1) If a provincial company beneficially owns an interest in an unincorporated body referred to in section 3.D.6(2) and

(a) the unincorporated body is carrying on business in an unsound manner that may imperil the company's investment if continued, or

(b) in the case of an unincorporated body that is controlled by the company, the company fails to provide information to the Minister under section 3.D.8,

the Minister may, by order, direct the company to divest itself of all or part of its beneficial ownership within the time specified in the order.

3.D.9(2) If a provincial company beneficially owns shares in a body corporate referred to in section 3.D.7(3) and

(a) the body corporate is carrying on business in an unsound manner that may imperil the company's investment if continued, or

(b) in the case of a body corporate that is a subsidiary, the company fails to provide information to the Minister under section 3.D.8,

the Minister may, by order, direct the company to divest itself of all or part of its beneficial ownership within the time specified in the order.

PORTFOLIO LIMITS

Exclusion from portfolio limits

3.D.10(1) Subject to subsection (3), the value of all investments acquired by a provincial company and any of its subsidiaries as a result of a realization of a security interest must not be included in calculating the value of the investments of the company and its subsidiaries under sections 3.D.11 to 3.D.16

(a) for a period of 7 years following the day on which the interest was acquired, in the case of an interest in real property, and

(b) for a period of 2 years following the day on which the investment was acquired, in the case of an investment other than an interest in real property.

3.D.10(2) The Minister may, in the case of any particular provincial company, extend any period referred to in subsection (1) for such further period or periods, and on such terms and conditions, as the Minister considers necessary.

3.D.10(3) Subsection (1) does not apply to interests in real property that are prescribed for the purposes of this subsection.

Lending limit - life companies

3.D.11(1) Subject to subsection (2), a provincial life company must not, and must not permit its subsidiaries to,

(a) make or acquire a commercial loan, or

(b) acquire control of a body corporate referred to in section 3.D.7(3) that holds commercial loans,

if the aggregate value of all commercial loans held by the company and its subsidiaries exceeds, or if the making or acquisition of the commercial loan or acquisition of control of the body corporate would cause the aggregate value of all commercial loans held by the company and its subsidiaries to exceed, 5% of the total assets of the company.

3.D.11(2) A provincial life company that has more than $15 000 000 of base capital may, with the prior approval of the Minister,

(a) make or acquire commercial loans, or

(b) acquire control of a body corporate referred to in section 3.D.7(3) that holds commercial loans.

Lending limit - property and casualty companies

3.D.12 A provincial property and casualty company must not, and must not permit its prescribed subsidiaries to,

(a) make or acquire a commercial loan or a loan to an individual, or

(b) acquire control of a body corporate referred to in section 3.D.7(3) that holds commercial loans or loans to individuals

if the aggregate value of all such loans held by the company and its prescribed subsidiaries exceeds, or if the making or acquisition of the loan or the acquisition of control of the body corporate would cause the aggregate value of all such loans held by the company and its prescribed subsidiaries to exceed, 5% of the total assets of the company.

Limit on real property interest

3.D.13 A provincial company must not, and must not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire an interest in real property, or

(b) make an improvement to any real property in which the company or any of its prescribed subsidiaries has an interest,

if the aggregate value of all of the company's interests in real property exceeds, or if the acquisition of the interest or the making of the improvement would cause that aggregate value to exceed, 10% of the total assets of the company and its prescribed subsidiaries.

Limits on equity acquisitions

3.D.14 A provincial company must not, and must not permit its prescribed subsidiaries to,

(a) purchase or otherwise acquire any participating shares of any body corporate or any ownership interests in any unincorporated body, other than those in which the company has, or by virtue of the acquisition would have, a substantial investment, or
(b) acquire control of a body corporate that holds shares or ownership interests referred to in clause (a),
if the aggregate value of
(c) all participating shares, excluding participating shares of bodies corporate referred to in section 3.D.7(3) in which the company has a substantial investment, and
(d) all ownership interests in unincorporated bodies
beneficially owned by the company and its prescribed subsidiaries exceeds, or if the purchase or acquisition would cause that aggregate value to exceed, the prescribed percentage of the total assets of the company and its prescribed subsidiaries.

Aggregate limit
3.D.15 A provincial company must not, and must not permit its prescribed subsidiaries to,
(a) purchase or otherwise acquire
(i) participating shares of a body corporate, other than those of a body corporate referred to in section 3.D.7(3) in which the company has, or by virtue of the acquisition would have, a substantial investment,
(ii) ownership interests in an unincorporated body, or
(iii) interests in real property,
or
(b) make an improvement to real property in which the company or any of its prescribed subsidiaries has an interest
if the aggregate value of
(i) all participating shares and ownership interests referred to in clause (a)(i) and (ii) that are beneficially owned by the company and its prescribed subsidiaries, and
(ii) all of the company's interests in real property referred to in clause (a)(iii)
exceeds, or if the acquisition of the shares or interests or the making of the improvement would cause that aggregate value to exceed, 30% of the total assets of the company and its prescribed subsidiaries.

Assets transactions
3.D.16 A provincial company must not, without the approval of the Minister, in any transaction or series of transactions with the same party during a period of 12 months, acquire or dispose of assets, directly or indirectly, other than assets that are debt obligations referred to in section 3.D.1(a)(ii)(A) to (D), having a value in excess of 10% of the total assets of the company as at the beginning of the 12-month period.

Retaining investments
3.D.17(1) If a provincial company has acquired on or before the coming into force of this Act an investment that was allowed under the *Insurance Act* in force at the time of acquisition, but that is not permitted under this Act and the regulations, the company may retain the investment.

3.D.17(2) A provincial company that has an investment referred to in subsection (1) must not increase the amount of or renew or extend the investment without the prior consent of the Minister.

Sub-Part E: RELATED PARTY TRANSACTIONS

TRANSACTIONS WITH RELATED PARTIES

Interpretation
3.E.1(1) In this Sub-part,

(a) "fundamentally reinsure" with respect to a contract of insurance means

(i) that the insurer under the contract transfers or assigns all rights and obligations under the contract to another insurer, or

(ii) that the contract is replaced by novation and the insurer under the replacement contract is different from the insurer under the original contract;

(b) "loan" includes a deposit, a financial lease, a conditional sales contract, a repurchase agreement and any other similar arrangement for obtaining funds or credit, but does

not include investments in securities or the making of an acceptance, endorsement or other guarantee;

(c) "senior official" of a body corporate means an individual who

(i) is a director and a full-time employee of the body corporate,

(ii) is an officer or the chief operating officer, chief financial officer, chief accountant, chief auditor or chief actuary of the body corporate,

(iii) performs functions for the body corporate similar to those performed by an official referred to in subclause (ii),

(iv) is the head of the strategic planning unit of the body corporate,

(v) is the head of the unit of the body corporate that provides legal services or human resources services to the body corporate,

(vi) is an official who reports directly to the body corporate's board of directors, chief executive officer or chief operating officer, or

(vii) is prescribed.

3.E.1(2) A transaction, guarantee or investment is made or entered into if an existing transaction, guarantee or investment, including one made or entered into before the coming into force of this section, is modified, added to, extended or renewed.

3.E.1(3) Where a transaction is required by or under this Sub-part to be at fair market rate, that requirement is satisfied, subject to subsection (4), if the transaction is not at fair market rate but is at a rate and terms that are more financially advantageous to the provincial company or subsidiary than actual fair market rate.

3.E.1(4) Subsection (3) does not apply where the transaction is between
(a) a provincial company and its affiliate, or
(b) a subsidiary of a provincial company and an affiliate of the provincial company.

Meaning of related party

3.E.2(1) For the purposes of this Sub-part, a person is a related party of a provincial company if the person
(a) has a significant interest in a class of shares of the company,
(b) is a director or senior official of the company or of a body corporate that controls the company or is acting in a similar capacity in respect of an unincorporated body that controls the company,
(c) is the spouse, or a child who is less than 18 years of age, of a person described in clause (a) or (b),
(d) is an entity that is controlled by a person referred to in any of clauses (a) to (c),
(e) is an unincorporated body in which the company beneficially owns more than a 10% interest,
(f) is a body corporate in which the company has a substantial investment,
(g) is an entity in which a person who controls the company has a substantial investment,
(h) is an entity in which the spouse, or a child who is less than 18 years of age, of a person who controls the company has a substantial investment, or
(i) is designated under section 3.E.3 as a related party.

3.E.2(2) Unless the regulations provide otherwise, the following are not a related party of a provincial company:
(a) a financial institution that wholly owns the company;
(b) a wholly owned subsidiary of the company.

3.E.2(3) Where the Minister is satisfied that a subsidiary of a provincial company that is not a wholly owned subsidiary of the company functions primarily for the purpose of providing a service, other than a financial service, to the company or the company's subsidiaries, the Minister may, on application, exempt the subsidiary from the status of related party of the company, subject to any terms and conditions the Minister considers appropriate.

Designated related party

3.E.3 For the purposes of this Sub-part, the Minister may designate any person as a related party of a provincial company if the Minister is of the opinion that

(a) the person is acting or has acted jointly or in concert with a related party of the company with respect to entering into a transaction that would be prohibited or restricted under this Sub-part if entered into by or with respect to that related party,

(b) there exists or has existed between the person and the company an interest or relationship that might reasonably be expected to affect or that has affected the exercise by the company of its best judgment with respect to a transaction, or

(c) the person is acting in concert with one or more other persons to own or control, directly or indirectly, 10% or more of any class of voting shares of the company.

Transactions contemplating related party status

3.E.4 If a person who, but for this section, is not a related party enters into a transaction with a provincial company or its subsidiary knowing that the person is going to become a related party of the company, the person is a related party of the company with respect to that transaction.

Prohibited transactions, guarantees and investments

3.E.5 Except as provided in this Sub-part,

(a) no provincial company or subsidiary of a provincial company may, directly or indirectly, enter into any transaction with a related party of the company,

(b) no related party of a provincial company may, directly or indirectly, enter into any transaction with the company or its subsidiary,

(c) no provincial company or subsidiary of a provincial company may, directly or indirectly, enter into any guarantee on behalf of a related party of the company, and

(d) no provincial company or subsidiary of a provincial company may, directly or indirectly, make an investment in or take a security interest in any securities of a related party of the company.

Exceptions to the prohibition

3.E.6 This Sub-part does not apply in respect of

(a) the granting of indemnification in accordance with section 3.B.251,

(b) the issue by the provincial company of shares of any class when fully paid for in money or when issued

(i) in accordance with any provisions for the conversion of other issued and outstanding securities of the company into shares of that class,

(ii) as a share dividend,

(iii) in exchange for shares of a body corporate that has been continued as a provincial company under Sub-part B,

(iv) in accordance with the terms of an amalgamation under Sub-part B,

(v) by way of consideration in accordance with the terms of an agreement referred to in Sub-part B, Division 9 in which the provincial company agrees to sell all or substantially all of its assets, or

(vi) with the approval of the Minister, in exchange for shares of another body corporate,

(c) the payment of dividends or policy dividends or bonuses, or

(d) transactions that consist of the payment or provision by a provincial company of salaries, fees, stock options, policy premiums, pension benefits, incentive benefits or other benefits or remuneration to persons who are related parties of the company in their capacity as directors, officers or employees of the company.

Permitted transactions

3.E.7(1) A provincial company or a subsidiary of a provincial company may

(a) enter into a transaction with a related party that involves minor or general expenditures by the company or the subsidiary,

(b) enter into a transaction with a related party for

(i) the sale of goods, or

(ii) the provision of financial services that are normally sold or provided to the public by the company or the subsidiary in the ordinary course of business, so long as the prices and rates charged by the company or subsidiary are at fair market rate,

(c) enter into a transaction with a related party that is a financial institution if

(i) the transaction consists of a deposit made at fair market rate and for a prescribed purpose, or

(ii) the transaction consists of the acquisition at fair market rate of prescribed securities from a securities dealer who is not an underwriter, within the meaning of that term in the Securities Act, in the distribution of those securities and is not selling them as their principal, and

(d) make a loan or give a guarantee on behalf of a senior official of the company or subsidiary if the aggregate of the outstanding principal and interest owing on all such loans and the contracted amount of all outstanding guarantees to or on behalf of that senior official does not exceed the lesser of

(i) $100 000, and

(ii) twice the annual salary of that senior official.

3.E.7(2) The conduct review committee of a provincial company must, subject to any prescribed limits, develop criteria as to what constitutes minor or general expenditures for the purposes of subsection (1)(a).

3.E.7(3) A provincial company may, subject to Sub-part B, fundamentally reinsure its contracts of insurance with a related party of the company.

3.E.7(4) A related party of a provincial company may, subject to Sub-part B, fundamentally reinsure its contracts of insurance with the company.

3.E.7(5) A provincial company may reinsure a contract of insurance in the ordinary course of its business with a related party of the company in accordance with Section 2.6.

3.E.7(6) A provincial company may accept or retain on the direction of a policyholder or beneficiary who is a related party amounts that are payable as

(a) policy dividends or bonuses, or

(b) policy proceeds on the surrender or maturity of the policy or on the death of the person whose life is insured where the liabilities of the company in respect of the amount vary in amount depending on the market value of a specified group of assets.

Transactions requiring directors' approval

3.E.8 A provincial company or its subsidiary may with the prior approval of the directors of the company

(a) enter into a written contract with a related party for the provision of management services to or by the company or subsidiary if it is reasonable that the company or subsidiary obtain or supply the services and so long as the consideration is reasonable for the services provided and is at fair market rate,

(b) enter into a written lease of real estate or personal property with a related party so long as

(i) the rent is at fair market rate,

(ii) the term of the lease and all renewals does not exceed

(A) 5 years in the case of a lease of personal property, or

(B) 20 years in the case of a lease of real estate, and

(iii) the terms of the lease are otherwise competitive and reasonable,

(c) enter into a written contract with a related party at fair market rate for pension and benefit plans, stock options, incentive benefits and other reasonable commitments incidental to employment,

(d) enter into a written contract with a related party respecting the provision of goods or services, or providing for a networking arrangement for the provision of goods and services, other than management services, so long as the price paid for those goods or services is at fair market rate and the term of the contract and all renewals does not exceed 5 years in total,

(e) acquire from or sell to a related party prescribed securities, other than securities issued by the related party, so long as the transaction is at fair market rate,

(f) acquire beneficial ownership of shares of a body corporate as permitted by subsection 3.D.7(3),

(g) make a loan to or guarantee the obligations of an entity, other than a financial institution, in which the company beneficially owns shares as permitted by subsection 3.D.7(3) if the loan or guarantee is at fair market rate and meets prescribed conditions,

(h) make a loan to

(i) a director or senior official of the company,

(ii) an employee of a prescribed class of the company, or

(iii) the spouse of a director or senior official of the company or of an employee referred to in sub-clause (ii) on the security of the residence of the person to whom the loan is made, and the loan must be at fair market rate except in the case of a loan to an employee of the prescribed class, to a senior official or to a director who is a senior official or who is an employee of the prescribed class,

(i) make a personal loan to

(i) a senior official of the company,

(ii) an employee of a prescribed class of the company, or

(iii) the spouse of a senior official of the company or of an employee referred to in sub-clause (ii) that is fully secured other than by promissory note, and the loan must be at fair market rate except in the case of a loan to a senior official or to an employee of the prescribed class,

(j) make a loan to a related party that is a financial institution in which the company beneficially owns shares as permitted under subsection 3.D.7(3), if the loan is at fair market rate, is fully secured by securities that meet prescribed qualifications and is for prescribed purposes,

(k) enter into a transaction with a related party that is a financial institution if the transaction consists of a disposition by the company or subsidiary of assets for which the consideration is fully paid in money and is at fair market rate,

(l) guarantee the obligations of a related party that is a financial institution, and

(m) enter into any other transaction with a related party that the regulations permit it to enter into with the prior approval of the directors of the company.

Procedures for approvals by directors

3.E.9(1) Where this Sub-part requires that a transaction have the prior approval of the directors of a provincial company, the approval must be given in writing and in accordance with procedures established under section 3.E.13, and the approval may be given with respect to a specific transaction or with respect to a class of transactions.

3.E.9(2) Where this Sub-part requires that a transaction have prior approval of the directors of a provincial company and the transaction will be reviewed by the directors of a subsidiary of the company and the subsidiary is a financial institution, the directors of the company are not required to review the transaction.

Disclosure

3.E.10(1) A person who knows or has reason to believe that the person is a related party of a provincial company and who proposes to enter into a transaction or guarantee with the company or its subsidiary for which the approval of the directors of the company is required must disclose in writing to the company the nature of the person's interest in the proposed transaction or guarantee forthwith after becoming aware of the facts that make the person a related party of the company.

3.E.10(2) Where the related party is a director or senior official of a provincial company, disclosure must be made in accordance with section 3.B.240.

3.E.10(3) Where, with respect to a proposed transaction or guarantee referred to in subsection (1), a provincial company knows or has reason to believe that a party is a related party of the company, the company must take all reasonable steps to obtain from that other party full disclosure in writing of any interest or relationship, direct or indirect, that would make that other party a related party of the company.

3.E.10(4) The directors of the provincial company must ensure that a disclosure under subsection (1) or (3) is entered in the minutes of the first directors' meeting held after the making of the disclosure.

3.E.10(5) A related party must not

(a) vote or attempt in any way to influence the voting on any resolution to approve the transaction or guarantee, or

(b) be present while the subject-matter of the transaction or guarantee is being discussed or the vote is being conducted.

3.E.10(6) Where a provincial company does not receive full disclosure as required by this section in respect of a proposed transaction or guarantee, the company or its subsidiary, as the case may be, must not enter into the transaction or guarantee.

Transactions requiring Ministerial approval

3.E.11 A provincial company or its subsidiary may with the prior approval of the Minister enter into a transaction, guarantee or investment or a class of transaction, guarantee or investment with a related party of the company that would otherwise be prohibited or restricted by this Act or the regulations if the Minister is satisfied that the transaction, guarantee or investment is in the best interests of the company and is not prejudicial to the interests of the shareholders and policyholders.

Limits on permitted transactions

3.E.12 No provincial company or subsidiary of a provincial company may enter into a transaction with a related party of the company that is permitted under this Sub-part if the transaction exceeds the prescribed limits.

Review and approval procedures

3.E.13(1) The conduct review committee of a provincial company must establish written review and approval procedures to be followed by the company to ensure compliance with this Subpart.

3.E.13(2) The procedures referred to in subsection (1) must be reviewed at least once each year by the conduct review committee.

3.E.13(3) The conduct review committee must report on its review under subsection (1) and must give its recommendations, if any, with respect to the procedures to the board of directors.

3.E.13(4) The procedures referred to in subsection (1) must deal with at least the following matters:

(a) the formalities governing transactions, guarantees and investments in respect of a related party;

(b) the obligations of the provincial company, its subsidiaries and the related party to disclose information;

(c) the protection of confidential information held by the provincial company or its subsidiaries relating to its business associates, and the conduct of the company or subsidiary in cases where the interests of the company or subsidiary or of a person affiliated with either of them may be in conflict with the interests of its business associates.

3.E.13(5) The procedures referred to in subsection (1) are subject to the approval of the directors and the directors, on receipt of any recommendation from the conduct review committee, must review the procedures and make any changes they consider necessary.

Duty to report contraventions

3.E.14(1) The auditor of a provincial company must promptly report to the directors and the Minister any breach of this Sub-part of which the auditor is aware or is made aware under subsection (2).

3.E.14(2) Any person undertaking professional services for a provincial company who, in providing the professional services, becomes aware of a breach of this Sub-part must promptly report the breach to the directors and the auditor of the company, unless the breach has already been reported under subsection (1).

3.E.14(3) Nothing in this section abrogates any privilege that may exist between a solicitor and a client.

3.E.14(4) A person who in good faith makes a report under subsection (1) or (2) is not liable in any civil action arising from it.

3.E.14(5) Where a provincial company or its subsidiary has entered into a transaction
(a) that is prohibited under this Sub-part, or
(b) without the approvals required under this Sub-part,
the company must, on becoming aware of that fact, forthwith notify the auditor and the Minister of that fact.

Reliance on information

3.E.15 A provincial company and any person who is a director, officer, employee or agent of the company may rely on any information received under section 3.E.10 regarding disclosure or any information otherwise acquired in respect of any matter that might be the subject of such a disclosure, and the company and person are not liable in any civil action for anything done or omitted to be done in good faith in reliance on any such information.

Onus of proof

3.E.16 For the purposes of this Sub-part, the onus is on the related party and the provincial company or its subsidiary to establish that a transaction, guarantee or investment between the company or subsidiary and the related party is permitted under this Sub-part.

Applications to Court

3.E.17(1) Where a transaction, guarantee or investment that is prohibited under this Subpart takes place, any interested person, including the Minister, may apply to the Court for an order

(a) setting aside the transaction, guarantee or investment and directing that the related party account to the provincial company for any profit or gain realized, and

(b) that each person who participated in or facilitated the transaction, guarantee or investment pay to the company on a joint and several basis
(i) the damages suffered,
(ii) the face value of the transaction, guarantee or investment, or
(iii) the amount expended by the company in the transaction, guarantee or investment, and on the application the Court may so order or make any other order it thinks fit, including an order for compensation for the loss or damage suffered by the company and punitive or exemplary damages from the related party.

3.E.17(2) A person who is not a director is not liable under subsection (1)(b) unless the person knew or ought reasonably to have known that the transaction, guarantee or investment contravened this Sub-part.

3.E.17(3) An application under subsection (1) in respect of a transaction, guarantee or investment, may only be made within 3 months of the transaction, guarantee or investments having been entered into.

Regulations
3.E.18 The Lieutenant Governor in Council may make regulations
(a) respecting exceptions to subsection 3.E.2(2);
(b) specifying transactions for the purposes of subsection 3.E.8(m) that may be entered into with a related party with the prior approval of the directors of the provincial company;
(c) respecting any matter that is to be prescribed under this Sub-Part.

Sub-Part F: PROVINCIAL MUTUAL INSURANCE CORPORATIONS

GENERAL

Definition
3.F.1 In this Sub-Part, unless the context otherwise requires,

"directors" means the board of directors of a company incorporated and licensed under the laws of the Province to carry on a mutual insurance business in the Province;

"member" means a person holding a contract of insurance issued by a provincial mutual insurance company;

Application
3.F.2(1) The provisions of this Part apply to every provincial mutual company licensed under the provisions of this Act to undertake fire, theft and livestock insurance and such other classes of insurance as are approved by the Superintendent, in this Part called "the insurer".

3.F.2(2) Wherever the provisions of the statutory conditions applicable to fire insurance are in conflict with the provisions of this Part, the provisions of this Part, prevail with respect to provincial mutual companies.

CONTRACTS

3.F.3 Subject to the provisions of section 3.F.4 the insurer may issue policies of fire, theft and livestock insurance and such other classes of insurance as are approved by the Superintendent for any term not exceeding three years.

3.F.4(1) No insurer shall undertake

(a) any risk on or in respect of any one property or risk subject to the hazard of a single fire or other single peril under a contract of fire insurance,
(b) any risk under a contract of livestock or theft insurance, or
(c) any risk under a contract of any other class of insurance approved by the Superintendent,

for an amount greater than five thousand dollars unless such risk is reinsured to an amount sufficient to reduce the net liability of the insurer to the amount of five thousand dollars.

3.F.4(2) The Superintendent, upon the approval of Minister, may permit an insurer to increase the amount of the net liability of an insurer on or in respect of risks

(a) subject to the hazard of a single fire or other single peril under a contract of fire insurance,
(b) under a contract of livestock insurance,
(c) under a contract of theft insurance, or
(d) under a contract of any other class of insurance approved by the Superintendent.

3.F.4(3) A risk subject to the hazard of a single fire or any other single peril shall be deemed to include the total amount at risk on buildings or their contents where such buildings are distant less than thirty-five feet from each other.

3.F.5 No policy of insurance shall be issued by an insurer until applications for fire insurance have been received and approved by the Directors

(a) from at least fifty persons, and
(b) to an amount of at least one hundred thousand dollars.

3.F.6(1) The form, terms and conditions of the applications and policies of insurance of the insurer shall be determined by the Directors in conformity with the provisions of this Act and shall be subject to the approval of the Superintendent and any policy may be renewed at the discretion of the Directors by a renewal receipt instead of a new policy.

3.F.6(2) Every application and policy shall bear the words "Mutual Company - subject to *pro rata* distribution of assets and losses" together with a statement of the company's total reserves as of the thirty-first day of December preceding the date of the application or policy, stamped in red ink or printed in bold face type of not less than twelve points, at the head thereof.

RATES OF INSURANCE

3.F.7 The Directors may, subject to the provisions of this Act, and with the approval of the Superintendent, adopt a tariff of rates for premium notes, and vary the same from time to time, and determine the sum to be insured on any property.

3.F.8 The Directors may when authorized by by-law make arrangements with an insurer, whether licensed under this Part, or not, for the reinsurance of a risk or any portion thereof, and may accept reinsurance of a risk, or any portion thereof, from any insurer on such conditions with respect to the rate and payment of premiums thereon as are agreed between them.

3.F.9(1) Subject to the approval of the Superintendent, the Directors may enter into a general reinsurance agreement with any other insurer or insurers licensed under the provisions of this Part for the reinsurance of risks on such terms and conditions as may be agreed upon.

3.F.9(2) Any such agreement may dispense with the issue of policies of reinsurance and may provide for reinsurance on the cash plan.

3.F.9(3) Every such agreement shall be in writing and under the corporate seals of the parties thereto.

LOSSES UNDER CONTRACTS

3.F.10 No executions shall issue against the insurer upon any judgment until after the expiration of one month from the recovery thereof.

3.F.11 In the case of a *pro rata* distribution of assets to satisfy indebtedness for losses under contracts issued by the insurer, the same percentage of payment shall be made to each member whether such payments are made at one time or in instalments.

RESERVE AND GUARANTEE FUND

3.F.12(1) The insurer shall form a reserve fund to consist of all money that remains on hand at the end of each year after payment of expenses and losses; until such reserve reaches the sum of five hundred dollars for every one hundred thousand dollars of the first one million dollars insurance in force, and three thousand dollars for each additional one million dollars or part thereof in force, up to which minimum level it shall be maintained.

3.F.12(2) Such reserve fund may, from time to time, be applied by the Directors to pay off such liabilities of the insurer as are not provided for out of the ordinary receipts for the same or any succeeding year.

3.F.12(3) The reserve fund is the property of the insurer as a whole and no member has a right to claim any share or interest therein in respect of any payment contributed by him towards it; nor shall such fund be applied or dealt with by the insurer or the Directors other than in paying its creditors, except on the order of the Minister.

MUTUAL INSURANCE GUARANTEE FUND

3.F.13 The Superintendent may approve the terms of an agreement to establish and maintain a fund to be known as the *Mutual Insurance Guarantee Fund* and to be held in trust by a trust company duly licensed in the province [17].

3.F.14(1) The assets of the *Mutual Insurance Guarantee Fund* may be used as directed by a board of trustees established under the agreement approved under subsection 3.12(1), with the approval of the Superintendent, for the purpose of satisfying claims by policyholders and third parties that cannot be met by the assets of an insurer who is a party to the agreement.

3.F.14(2) The assets of the *Mutual Insurance Guarantee Fund* shall

(a) be maintained at no less than a book value of two hundred thousand dollars including the value of any assessments made to restore the book value of two hundred thousand dollars, or such further amount as may be specified from time to time by the Superintendent;

(b) be maintained or increased by assessments on parties to the agreement on the basis set out in the agreement approved under subsection (1);

(c) be an authorized investment within the meaning of this Act and the value to be included by each licensed insurer shall be proportional to its contribution to the trust and shall be subject to examination by the Superintendent in the same manner as the other assets and property of licensed insurers;

(d) be invested and valued in the same manner and be subject to the same restrictions as the assets of a provincial mutual company.

3.F.14(3) No assessment referred to in paragraph (2)(b) shall be paid by an insurer if its effect would be to reduce the surplus of that insurer below the minimum amount specified by the Superintendent, and such a waiver of an assessment shall not be cause for the insurer's expulsion from the Mutual Insurance Guarantee Fund.

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[17] Only NB now has a fund; other provincial mutuals belong to PACICC

3.F.14(4) The Superintendent shall be deemed to have an interest in the *Mutual Insurance Guarantee Fund* as representative of all persons who may be claimants against insurers that are parties to the agreement and the trustees shall from time to time furnish the Superintendent with such information and accounts with respect to the Fund as the Superintendent may require.

3.F.15 The Superintendent may permit the withdrawal from the trust agreement of an insurer upon terms and conditions satisfactory to the Superintendent.

3.F.16 All parties to the agreement and their officers and directors shall be deemed to be persons engaged in the business of insurance for the purposes of this Act and the Regulations and any contravention of the trust agreement constitutes an offence.

3.F.17 An account filed with the Superintendent under subsection 3.F.14(4), except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and the trustees' administration thereof, unless the Superintendent, within six months of the date upon which the account is filed with him, requires in writing that such account be filed and passed before a judge of the Court.

Sub-Part G: REGULATIONS

Regulations

3.G.1 The Minister may make Regulations

(a) prohibiting names of insurers or any word, expression or symbol in the names of insurers and respecting requirements for the names of insurers for the purposes of Sections 2.14 and 3.B.98,

(b) with respect to a provincial company that has share capital, establishing limits on the payment to shareholders of the company from a participating account or on the transfer of an amount from a participating account to an account from which payment may be made to shareholders of the company,

(c) establishing limits on the transfer from a participating account to a segregated fund,

(d) defining terms that are specified in section 3.D.1 as being defined in the regulations,

(e) defining interests in real property for the purposes of one or more provisions of this Subpart and determining the method of valuating those interests,

(f) prescribing quantitative limits on investments that may be made by a provincial company or its subsidiary, including quantitative limits on investments referred to in section 3.D.7(3) and, where a limit has been imposed by this Act, prescribing limits that are more restrictive,

(g) imposing terms and conditions subject to which a provincial company or its subsidiary may make investments or enter into other transactions, and imposing restrictions on the manner in which investments and other transactions may be made, given or entered into,

(h) prescribing investments and other transactions that a provincial company or its subsidiary must not make, give or enter into,

(i) respecting the method to be used to value the assets of a provincial company for the purposes of this Act,

(j) respecting any matter that is to be prescribed under this Subpart,

(k) the effective and better operation of this Part .

Part 4 - RECIPROCAL AND INTER-INSURANCE EXCHANGES

Definitions

4.1 In this Part

"**attorney**" means a person authorized to act for subscribers;

"**subscribers**" means persons exchanging with each other reciprocal contracts of indemnity or inter-insurance.

Authority for exchange of reciprocal contracts

4.2 Any person may exchange with other persons in the Province and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed under this Act, except life insurance, accident insurance, sickness insurance, and guarantee insurance.

Subscriber not to be deemed insurer

4.3 No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons reciprocal contracts of indemnity or inter-insurance under the provisions of this Act.

Execution of contract

4.4(1) Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided.

Who may maintain action on contract

4.4(2) Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in the Province.

Declaration by members of exchanges

4.5 The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration, verified by oath, setting out

(a) the name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception,

(b) the classes of insurance to be effected or exchanged under such contracts,
(c) a copy of the form of the contract, agreement or policy under or by which such reciprocal contracts of indemnity or inter-insurance are to be affected or exchanged,
(d) a copy of the form of power of attorney under which such contracts are to be effected or exchanged,
(e) the location of the office from which such contracts are to be issued,
(f) a financial statement in a form approved by the Superintendent,
(g) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange, and
(h) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney.

Licence
4.6(1) Upon a reciprocal or exchange complying with the provisions of this Part and Act, the Superintendent may issue a licence.

Evidence required before issue of licence
4.6(2) A licence shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance
(a) against loss by fire, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applications have been made for indemnity upon at least seventy-five separate risks in the Province or elsewhere, aggregating not less than one and one-half million dollars, as represented by executed contracts or bona fide applications to become concurrently effective;
(b) in respect of automobiles other than the type described in section 4.2, until evidence satisfactory to the Superintendent has been filed with the Superintendent that applications have been made for indemnity upon at least five hundred automobiles, as represented by executed contracts or bona fide applications, to become concurrently effective, and that arrangements satisfactory to the Superintendent are in effect for the reinsurance of all liabilities in excess of such limits as the Superintendent may approve.

Deemed service of process
4.7 Where the office from which such contracts were, or are to be, issued is not in the Province, service upon the Superintendent of notice of process in any action or proceeding in the Province in respect of a contract of indemnity or inter-insurance effected by the exchange shall be deemed service upon the subscribers who are members of the exchange at the time of such service.

Statement of maximum indemnity

4.8 There shall be filed with the Superintendent by the attorney, as often as the Superintendent requires, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney, verified by oath, to the effect that the attorney has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least five hundred subscribers, and that from such examination or other information in the attorney's knowledge or possession it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber.

Reserve fund

4.9(1) There shall at all times be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to fifty per cent of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on those for longer periods.

Guarantee fund

4.9(2) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus, an additional sum, in excess of all liabilities, in cash or approved securities, amounting to not less than fifty thousand dollars.

Fire insurance exchange, principle office in Province

4.9(3) In the case of a fire insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (2) shall not be less than twenty-five thousand dollars.

Automobile insurance exchange, principle office in Province

4.9(4) In the case of an automobile insurance exchange whose principal office is in the Province, the guarantee fund or surplus referred to in subsection (2) shall, during the first year of operation of the exchange, be maintained at an amount not less than ten thousand dollars, and thereafter not less than twenty-five thousand dollars.

Deficiency

4.9(5) If at any time the amounts on hand are less than the requirements of this section, the subscribers or the attorney shall forthwith make up the deficiency.

Other funds used to cover deficiency, terms and conditions of

4.9(6) Where funds other than those that accrued from premiums or deposits of subscribers are supplied to make up a deficiency as herein provided for, such funds shall be deposited or invested and held for the benefit of subscribers in such form and under such terms and conditions as the Superintendent requires so long as a deficiency exists and may thereafter be returned to the depositor.

Approved securities, defined

4.10(1) In this Part "approved securities" means securities the investment in which is authorized by this Part.

Investment of surplus funds and reserve, in certain securities

4.10(2) If the principal office of the exchange is in the Province, the surplus insurance funds and the reserve fund of the exchange shall only be invested in approved securities..

Evidence as to investments

4.10(3) If the principal office of the exchange is outside the Province it shall be a condition precedent to the issue of a licence under this Act that evidence satisfactory to the Superintendent be filed with him or her showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate.

Liability on behalf of subscriber only

4.11(1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber.

Reinsurance limitation

4.11(2) No attorney or exchange licenced under this Part shall effect reinsurance of risks undertaken by the reciprocal or exchange in another reciprocal or inter-insurance exchange unless

(a) the Superintendent authorizes the exchange to so reinsure, subject to such terms or conditions as the Superintendent may approve, and

(b) such exchange operates on the same underwriting standards.

Attorney not to act until licence issued

4.12(1) No person shall act as attorney, or for or on behalf of any attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, unless and until a licence has been issued and unless such licence is in force.

Offence

4.12(2) Any person who contravenes subsection 1 is guilty of an offence.

Suspension or cancellation of licence

4.13(1) Where a licensed exchange or attorney fails or refuses to comply with or contravenes any provision of this Act, in addition to any other action, the licence of the exchange may be suspended or canceled by the Superintendent on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but such suspension or cancellation does not affect the validity of any reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts.

Notice of suspension or cancellation

4.13(2) Notice of suspension or cancellation shall be given by the Superintendent once in the official provincial *Gazette* as soon as reasonably may be after such suspension or cancellation.

Insurance against fire with unlicenced exchange effected outside Province permitted

4.14 Notwithstanding anything in this Act any person may insure against fire any property situated in the Province in any exchange not licensed or not required to be licenced under this Act, and any property so insured or to be insured may be inspected and any loss incurred in respect thereof adjusted, if such insurance is effected outside of the Province and without any solicitation in the Province directly or indirectly on the part of the insurer or attorney.

Parties

4.15 Subject to a Court Order otherwise, a reciprocal, in its name, may

a) be prosecuted for an offence, and
b) sue and be sued

Regulations

4.16 The Minister may make regulations for the better administration, operation and enforcement of this Part.

Part 5 - SOCIETIES

Definitions

5.1. In this Part,

"bylaws" includes the incorporating instrument of a society;

"rates of contribution" means the regular net premiums, dues, rates or contributions receivable from the members for the purpose of the payment at maturity of the society's certificates or contracts of insurance;

"society" means a fraternal society.

"supreme governing body" means a board of directors or any other group within a society having ultimate authority for managing the business and affairs of the society.

Application

5.2. Except as otherwise provided in this Act or by the Minister the provisions of this Part apply to all societies duly licensed and carrying on the business of life insurance in the Province, and to clubs, societies or associations, incorporated or unincorporated, that receive either as trustees or otherwise, contributions or money from its members out of which gratuities or benefits are paid, directly or indirectly, upon the death of any of its members.

LICENCING

Societies not to be licensed

5.3 No society shall be licensed

(a) if it undertakes insurance contracts with persons other than its own members,

(b) if it insures or indemnifies against contingencies other than sickness, accident, disability, or death, or funeral expenses,

(c) if the sum or sums payable by it on the death of any one member, other than a funeral benefit or a double indemnity accident benefit, exceed in all ten thousand dollars, unless the excess over that amount is reinsured,

(d) if it undertakes old age or endowment insurance other than as authorized in this Part, or annuities upon lives other than annuities issued as part of or arising directly from contracts of life or endowment insurance,

(e) if it has upon its books less than seventy-five members in good standing,

(f) if it is in effect the property of its officers or of any other person or persons or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profits, or if its funds are under the control of persons or officers appointed for a period exceeding four years,

(g) if it is a society that has not been authorized to carry on business in the Province before the passing of this Act, unless it files with the Superintendent a declaration of its actuary of its ability to carry out its contracts, or

(h) that undertakes contracts of insurance but is not formed exclusively for that purpose and that does not for the purpose of such contracts keep distinct and separate funds, securities, books and vouchers.

Exception

5.4 Paragraph [5.3](d) does not apply to

(a) contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of the corporation,

(b) a society that before the coming into force of this Act was bona fide transacting exclusively with its members endowment insurance in the Province, and that has continued so to do up to the date of application for licence,

(c) in so far as it relates to annuities upon lives, a society, the membership of which is limited by its constitution or laws to municipal or government employees undertaking annuities on lives in the nature of old age pensions.

Societies not to be licensed

5.5 A society incorporated under the laws of the Province, is not entitled to a licence unless its head office is located and maintained in the Province and the secretary and treasurer are actual residents of the Province.

Central body or representative

5.6(1) Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in the Province or a duly authorized provincial representative of the society, such governing body if incorporated or such provincial representative of the society, may, if the Superintendent thinks proper, be dealt with as the society.

Central body incorporated in the Province

5.6(2) In the case of a society incorporated elsewhere than in the Province the central governing or controlling body in the Province incorporated by virtue of the law of the Province may, if the Superintendent considers it acceptable, be dealt with as the society.

CONSTITUTION AND RULES

Filing of bylaws and rules

5.7(1) Every society shall with its application for licence file in the office of the Superintendent, certified copies in duplicate of those articles of its constitution, including bylaws and rules that contain material terms not set out in the form of contract adopted for use by it, and of every amendment, revision or consolidation thereof, within thirty days after the passing thereof.

Superintendent exception within 30 days

5.7(2) The Superintendent may, within thirty days after the date of such filing, take exception to any amendment or revision if in his or her opinion, such amendment or revision or any part thereof is

(a) contrary to the provisions of this Act,
(b) actuarially unsound,
(c) oppressive to or discriminatory in application against any class of the membership of the society, or
(d) unjust or unreasonable.

Notice of exception

5.7(3) If the Superintendent takes exception to any such amendment or revision he or she shall forthwith notify the society thereof in writing, giving the reasons therefor and the society or any member or person affected by the decision of the Superintendent may, within ten days, appeal therefrom to Minister, who may approve of such amendment or revision.

Binding on society

5.7(4) The constitution, bylaws, rules and any amendment, revisions or consolidation thereof not excepted to, or if excepted to, that has been further amended, in accordance with the Superintendent's direction, or approved by the Lieutenant-Governor in Council, shall be certified by the Superintendent to be duly passed by the society, and filed, and thereupon shall be deemed to be the rules in force on and after the date of the certificate until a subsequent amendment, revision or consolidation is in like manner certified and filed, and so from time to time, and are binding and obligatory upon all members of the society and upon everyone entitled to any benefit under any membership in or certificate of the society.

Violation of Act

5.7(5) The failure of the Superintendent to take exception to any rule of the society or amendment or revision and his or her certifying and filing thereof does not make valid any provisions of such rule that are inconsistent with this Act.

Repeal or amendment of rules

5.8 Where, because of a provision in any of its rules, a society otherwise entitled ought not, in the opinion of the Superintendent, to be licensed, it is not entitled to a licence until it has repealed or amended such rules in accordance with the direction of the Superintendent.

Copy of rules etc. available on demand

5.9(1) A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be made available by the society for inspection by any member or person at any reasonable time and the society shall provide a copy to any member who so requests for no charge and to any other person requiring the same on payment of five cents per page or part, or the actual cost, subject in all cases to a maximum amount that can be charged of five dollars.

Fraudulent delivery

5.9(2) Any officer or agent of a society, with intent to mislead or defraud, provides or permits to be given or gives to any person a copy of rules other than the rules then in force on the pretense that the same are the rules then in force, is guilty of an offence.

Substitution of installments for gross payments

5.10(1) Where, by the constitution and rules of a society, provision is made for the payment of an ascertained or ascertainable sum to a member in the event of the member becoming totally disabled, or of the member reaching a stated age, or upon the concurrence of both events, whether such provision is combined with other life insurance or not, the society may with the approval of the Superintendent, so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual installments without interest, the payment of the installments to be completed within a period not exceeding ten years from the happening of the event, but no person who has become or becomes so entitled shall receive any such payment unless at the maturity of each installment such person continues to be a member and has paid all dues and assessments adopted by the society.

When insured dies before receiving all installments

5.10(2) If the member dies after becoming totally disabled or reaching the stated age, but before the payment of all installments, the installments unpaid shall form part of the insurance money or benefits payable upon the death of such member.

Unmatured policies as liabilities

5.10(3) No unmatured contract of insurance creates any claim or liability against the society while a going society, or against the estate of the society in a winding-up or liquidation, but in a winding-up or liquidation the insured or beneficiary for value under such unmatured contract is entitled to share in the surplus assets of the society.

MEMBER'S RIGHTS AND LIABILITIES

Limitation of member's liability

5.11(1) The liabilities of a member under the member's contract are at any date limited to the assessments, fees and dues that became payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society.

Withdrawal from society
5.11(2) A member may at any time withdraw from the society by delivering or sending by registered post, notice in writing of the intention to withdraw and paying or tendering the assessments, fees and dues contemplated in subsection(1).

Release from liability
5.11(3) Upon withdrawal, the member is thereby released from all further accruing liability under the member's contract.

Exception
5.11(4) This section is subject to the provisions of any rules to the contrary certified by and filed with the Superintendent.

Notice before forfeiture
5.12(1) No forfeiture or suspension is incurred by reason of any default in paying a contribution or assessment, except such as are payable in fixed sums and at fixed dates, until after notice to the member stating the amount due by the member and that in case of default of payment within a reasonable time, not less than thirty days, to the proper officer to be named in the notice, the member's interest or benefit will be forfeited or suspended, and default has been made by the member in paying any contribution or assessment in accordance with the notice.

"fixed dates" defined
5.12(2) In subsection (1), "fixed dates" includes any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

Saving rights to reinstatement
5.12(3) Where under the constitution and rules of the society a defaulting member is entitled to be reinstated on payment of arrears, after a stated number of days default, this section shall not prejudice the rights of such member.

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Conditions of forfeiture restricted
5.13(1) Where it is stipulated that the benefit of the contract shall be suspended or reduced or forfeited for any other reason than for non-payment of money such condition is not valid unless it is held to be just and reasonable under the circumstances of the case.

Condition as to abstinence

5.13(2) In any contract in which total abstinence from intoxicating liquors is made an express condition such condition shall be deemed to be just and reasonable.

Notice to members
5.14(1) Subject to subsection (2), any notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or is sent by registered post to the member, or is left at the member's last known place of abode or of business or by publication in the official paper of the society.

Notice of reduction of benefits, etc.
5.14(2) A notice of the reduction of any benefit payable under a contract of insurance or of the increase of the premium payable thereunder shall be sent by registered post to the member at the member's last known place of abode or of business.

REPORTS AND READJUSTMENT OF CONTRACTS

Valuation report
5.15(1) In addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent not later than the first day of May in each year a valuation of its certificates or contracts of insurance in force at the preceding thirty-first day of December, and such valuation shall be prepared having regard to the prospective liabilities of the society under its contracts and to the rates of contribution of members in force at the date of valuation and shall be made and certified by an actuary appointed by the society and shall include a valuation balance sheet in such form and detail as the Superintendent approves.

Declaration of actuary
5.15(2) Where the valuation balance sheet shows that the society is in a position to provide for the payment of its contracts as they mature, without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect.

Distribution of summary and statement to members
5.15(3) A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than the first day of June in each year or by publication in the official paper of the society.

Exception as to certain societies
5.15(4) A society, the membership of which is limited by its constitution or laws to municipal or government employees shall not be required to file the valuation or to

publish the summary thereof unless and until required by the Superintendent in writing so to do.

Where assets of society insufficient
5.16(1) If it appears to the Superintendent from the statement and reports filed with him, or from an examination or valuation, that the assets of a society, applicable for the purpose are insufficient to provide for the payment of its contracts at maturity without deduction or abatement and without increase in its existing rates of contribution, the Superintendent shall make a special report to the Minister as to the financial condition of the society.

Requirement by Minister
5.16(2) If the Minister, after consideration of the report, concurs in the opinion of the Superintendent, the Superintendent shall require the society to make within such time as the Superintendent approves, but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts or such other changes as will enable the society to provide for the payment of its contracts at maturity.

Society to act
5.16(3) On receipt of notice of such requirement the society shall, in accordance with its laws or constitution, put into effect such changes as are approved by the actuary appointed by the society for the purpose aforesaid.

Special meeting of members
5.16(4) For the purpose of considering the request of the Superintendent, the supreme governing body of the society may call a special meeting of the supreme governing body of the society upon such notice as the authority considers reasonable and as the Superintendent may approve and such meeting so called shall be deemed to have been regularly constituted notwithstanding anything in its constitution or bylaws..

Reduction of benefits, or increase in rates
5.17 A society incorporated under the laws of the Province may by amendment of its constitution and rules reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes thereof, or make such other changes as are necessary to comply with the requirement of the Superintendent and such amendments when adopted by a majority of the votes duly cast by the members of the supreme governing body of the society at a general meeting thereof are binding upon the members of the society and upon their beneficiaries and the legal personal representatives of any of them, and upon all persons deriving legal rights from any member or beneficiary.

Default of society in complying with requirement of Superintendent

5.18(1) Where a society does not, within the time allowed, comply with the requirement of the Superintendent, the Superintendent shall thereupon appoint a readjustment committee of three persons, of whom at least one shall be an actuary, who shall forthwith investigate the assets, liabilities, rates of contribution and plans of insurance of the society and prepare a report containing such amendments to the society's constitution and rules reducing the benefits payable under its contracts or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or making such other changes as are deemed necessary to provide for the payment of all its contracts as they mature.

Amendments to be part of society's constitution

5.18(2) The readjustment committee shall file its report in the office of the Superintendent and deliver to the society a certified copy thereof whereupon the amendments contained therein shall be and become part of the constitution and rules of the society and shall be valid and binding upon its members, their beneficiaries, the legal personal representatives of any of them and all persons deriving legal right from any member or beneficiary, notwithstanding anything in its constitution and bylaws before such amendment or in its Act or instrument of incorporation or in any policy or certificate of insurance issued by it.

Date to be fixed in report

5.18(3) The readjustment committee shall in the amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution, provided for by such amendments, shall come into force.

Cooperation and expenses

5.18(4) The society shall furnish the readjustment committee with any required information, and bear the expense of the investigation and report.

Report by Superintendent where assets of certain societies insufficient

5.19(1) If it appears to the Superintendent from the statements and reports filed with him or from an examination or valuation, that the assets of a society, the membership of which is limited to municipal or government employees, applicable for the purpose, are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, the Superintendent shall make a special report as to the financial condition of the society to the Minister and to the head or responsible officer of the municipality or government of which the members are employees.

Responsibility of Superintendent

5.19(2) The Superintendent shall not make any order or assume any responsibility for the readjustment of rates or benefits of the society but a synopsis of the Superintendent's special report shall be included in any annual report made by the Superintendent.

Exception as to annual statement period

5.19(3) Where the constitution, by-laws or rules of a society provide for a fiscal year other than the calendar year, the Superintendent may, in his or her discretion, accept statements from it showing its affairs as at the end of the fiscal year instead of as at the end of the calendar year.

SPECIAL RATES AND BENEFITS

Where society unable to furnish declaration of actuary

5.20(1) Where a society, unable to furnish the declaration of an actuary, has adopted or hereafter adopts new rates of contribution that in the opinion of the actuary appointed by it, filed with the Superintendent make reasonable provision for the payment in full at maturity of its contracts issued or to be issued to its members on such new rates, such society shall, after the payment of the matured contracts, create and from time to time maintain, out of the contributions of such members and interest thereon, a reserve fund not less than the amount which, with the rates of contributions to be collected from such members, is, in the opinion of the actuary, required to pay such contracts in full as they mature; and such fund shall be a separate fund of the society and shall not be liable for payment of the debts and obligations of the society under its contracts with those members who have not contributed under the new rates.

New certificates may be issued

5.20(2) The society may provide in its constitution and rules for the issue of new certificates to members admitted to the society prior to the establishment of such fund upon such terms and conditions as will, in the opinion of the actuary appointed by it, certified in writing to the Superintendent, enable the society to pay in full the contracts of insurance issued to such members as they mature and the provisions of subsection (1) apply to such new certificates.

Annual valuation of actuary, what to show

5.20(3) The annual valuation of the actuary of the society maintaining such a separate fund shall show clearly and separately and in such detail as the Superintendent requires, the financial position of the society in respect of the certificates of insurance included, and those not included within the scope of the separate fund.

Merger of funds

5.20(4) When a society that has been maintaining such a separate fund files with the Superintendent a declaration of the actuary appointed by the society, the separate fund may, with the approval of the Superintendent, be merged with other similar funds of the society.

Common expense fund permitted

5.20(5) Nothing herein contained prevents a society that maintains such a separate fund, from maintaining a common expense fund.

Limitation of contribution

5.21 A society, that files with the Superintendent the declaration of an actuary or a society that is maintaining a separate fund for its contracts, may provide in its constitution and rules for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder are limited to a period of twenty or more years, if such rates of contribution have been approved by an actuary and such certificates of insurance are subject to the provisions of subsection 5.20(1); but such limitation of payments does not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with its constitution and rules either during or after the period of such limited payments.

Epidemic or unforseen contingency

5.22 In the event of an epidemic or other similar contingency impairing the funds of a society, the governing body of the society may with the approval of the Superintendent impose a special assessment or special assessments upon the members or upon such class or classes thereof and with such incidence as in its opinion is deemed necessary and equitable, and such special assessment or assessments are binding on the members of the society.

Insurance etc. in societies

5.23 A society that files with the Superintendent the declaration of an actuary may, if its constitution so provides and subject thereto,

(a) issue to its members old age insurance contracts providing for the payment of the money due on maturity thereof either at death or upon the insured attaining any age not less than sixty-five years,

(b) in case the society has more than five thousand members in a life insurance department, issue to its members endowment insurance contracts providing for the payment of the insurance money to such members at the expiration of twenty or more years from the date of such contracts, or to the beneficiary or beneficiaries under any of such contracts in case of death of any of such members prior to the expiration of the endowment period, or

(c) grant such surrender values or other equities as are approved by the actuary of the society and authorized by its constitution.

General or expense fund levies

5.24 The supreme governing body of a society may with the approval of the Superintendent make such additional levies from time to time upon members of the society as are necessary, in the opinion of the supreme governing body, properly to carry on the work of the society and prevent any deficit in its general or expense fund, and such additional levies are binding on the members of the society.

Certificate approving rates to be filed

5.25 Every society shall, before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution.

Application of surplus

5.26 A society whose valuation balance sheet shows a surplus of assets of more than five per cent over and above all net liabilities may apply such portion of such surplus as is approved by the actuary appointed by the society, in the manner prescribed by the constitution and rules of the society.

Part 6 - COMPENSATION ASSOCIATIONS

Definition

6.1 In this Act,

"compensation association" means a body corporate or unincorporated association, or both, the purpose of which is to provide compensation to eligible claimants and policyholders of insolvent insurers and that has been designated under the Regulations as a compensation association;

Membership in compensation association

6.2 Where a compensation association has been designated by the Regulations as a compensation association for one or more designated classes of insurance, every insurer while licensed to carry on that class of insurance and, for such other period of time as is provided in the compensation association's bylaws shall be deemed to be a member of the compensation association and shall be bound by the articles of incorporation, bylaws and memorandum of operation of the compensation association.

Assessments and levies

6.3(1) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association and, where the member fails to pay the assessment or levy within thirty days after the day the notice of the assessment or levy is mailed to the member,

(a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member or, if the insurer has ceased to be a member, from the former member, and

(b) the licence of the member to carry on insurance may be suspended and subject to any terms or conditions which the Superintendent considers appropriate, or canceled.

Idem

6.3(2) Any debt due from the member does not cease to be due on the termination of the member's membership.

Idem

6.3(3) Where an insurer's licence is canceled under this Part, the insurer must cease to carry on business in the Province, except so far as is necessary for the winding-up of its business in the Province.

Non-application

6.4 This part does not apply to,

(a) a mutual insurance corporation that is a member of a provincial mutual insurance guarantee fund designated by the Regulations,
(b) an insurer whose business is limited to that of reinsurance,
(c) a reciprocal or inter-insurance exchange,
(d) a type of insurer and a class of insurance designated by the Regulations,
(e) an insurer named in an agreement entered into by the Minister, or
(f) such other insurers designated under the Regulations.

Agreement with compensation association
6.5(1) The Minister may enter into agreements with a compensation association related to the conduct of a plan to compensate policyholders and eligible claimants of insolvent insurers.

Records of association
6.5(2) A compensation association shall file, annually and at any other time as requested by the Superintendent, with the Superintendent a copy of all constitution, bylaws, agreements, memorandum of operations, assessments, financial statements and any other document, materials or report that the Superintendent requests, and any amendments or variations

Regulations
6.6 The Minister may make regulations
(a) designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurance,
(b) designating insurers for the purposes of clause 6.4(f),
(c) designating types of insurers and classes of insurance for the purposes of clause 6.4(d),
(d) designating provincial mutual insurance guarantee funds, and
(e) for the better administration, operation and enforcement of this Part.

PART 7 - MARKET CONDUCT and CONSUMER PROTECTION

Sub-Part A: INSURANCE CONTRACTS

Application of Sub-Part

7.1 Except where otherwise provided and where not inconsistent with other provisions of this Act, this Sub-Part applies to every contract of insurance made in the Province other than contracts of life and accident and sickness insurance and marine insurance.

Contracts deemed made in the Province

7.2 Where the subject matter of a contract of insurance is property in the Province, or an insurable interest of a person resident within the Province, the contract, if signed, countersigned, issued or delivered in the Province or committed to the post office or to any person to be delivered to the insured, the insured's assign or agent in the Province, shall be deemed to evidence a contract made therein, and be construed according to the law thereof, and all money payable thereunder shall be paid at the head office, office of the chief officer or agent of the insurer in the Province, in lawful money in Canada.

POLICY OF INSURANCE

Terms, etc. of contracts invalid unless set out

7.3(1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, and, unless so set out, no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or beneficiary.

Exception

7.3(2) Subsection (1) does not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

Contents of renewal receipt

7.3(3) Where the contract, whether or not it provides for its renewal, is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract are set out in the contract and the renewal receipt refers to it by its number or date.

Regard to be given to application

7.3(4) The proposal or application of the insured shall not, as against the insured, be deemed a part of or be considered with the contract of insurance, except in so far as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

Erroneous statement in application

7.3(5) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso to the effect that the contract is to be avoided by reason of any statement in the application therefor, or inducing the insurer to enter into the contract, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract; and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

Materiality

7.3(6) The question of materiality in any contract is a question of fact; and no admission, term, condition, stipulation, warranty or proviso to the contrary, contained in the proposal or application for insurance, or in the policy, or in any agreement or document relating thereto, has any force or validity.

Application

7.3(7) This section does not apply to contracts of fire or automobile insurance.

Copy of application to be furnished to insured

7.4 An insurer shall provide to the insured a true copy of the insured's proposal or application for insurance.

Contract not to be inconsistent with Act

7.5(1) No insurer shall make a contract of insurance inconsistent with this Act.

Rights of insured

7.5(2) Any act or omission of the insurer resulting in non-compliance or imperfect compliance with any of the provisions of this Act does not render a contract invalid as against the insured.

Contents of Policy

7.6(1) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the amount, or the method of determining the amount, of the premium for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue, the date upon which the insurance takes effect and the date it terminates or the method by which the latter is fixed or to be fixed.

Application
7.6(2) This section does not apply to contracts of guarantee insurance.

Effect of delivery of policy
7.7(1) Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

Right of insurer re unpaid premium
7.7(2) The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which the insurer is liable under the contract of insurance.

Where cheque or note not honoured
7.7(3) Where a cheque, bill of exchange or promissory note or any promise to pay is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note or other promise to pay is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.

LOSS UNDER POLICY

Insurer must furnish forms
7.8(1) Every insurer, immediately upon receipt of a request, and in any event not later than thirty days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

Effect of violation
7.8(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, the provisions of section 17are not available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of money payable under the contract of insurance.

Furnishing of forms not an admission
7.8(3) The insurer by furnishing forms to make proof of loss shall not be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

Right of claimant against insurer
7.9 Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against such person in respect of such person's liability, and an execution

against such person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

Insurer to be added as third party

7.10(1) Where an insurer denies liability under a contract evidenced by a liability policy other than a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defense in the action.

Rights of insurer as third party

7.10(2) Upon being made a third party, the insurer may

(a) contest the liability of the insured to any party claiming against the insured,
(b) contest the amount of any claim made against the insured,
(c) deliver any pleadings in respect of the claim of any party claiming against the insured,
(d) have production and discovery from any party adverse in interest, and
(e) examine and cross-examine witnesses at the trial,

to the same extent as if the insurer were a defendant in the action.

Third party right notwithstanding

7.10(3) An insurer may avail itself of subsection (1) notwithstanding that another insurer is defending in the name of and on behalf of the insured an action to which the insured is a party.

Consolidation of actions

7.11(1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance the court may consolidate or otherwise deal therewith so that there shall be but one action for and in respect of all claims made in such actions.

Minors

7.11(2) Where an action is brought to recover the share of one or more minors all the other minors entitled, or the trustees, executors or guardians entitled to receive payment of the shares of such other minors, shall be made parties to the action, and the rights of all the minors shall be determined in one action.

Apportionment by court

7.11(3) In all actions where several persons are interested in the insurance money the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

Payee not resident or domiciled in the Province

7.11(4) Where the person entitled to receive money due and payable under any contract of insurance, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of such jurisdiction, is made to such person, such payment is valid and effectual for all purposes.

Payment into court

7.12(1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the court *ex parte* for an order for the payment thereof into court, and the court may order the payment into court to be made upon such terms as to costs and otherwise as the court directs, and may provide to what fund or name the amount shall be credited.

Discharge to insurer

7.12(2) The receipt of the registrar or other proper officer of the court is sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court.

Application

7.13(1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

Appraisal

7.13(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire.

Appraisers

7.13(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

Costs

7.13(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

Appointment by court

7.13(5) Where,

(a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so,

(b) the appraisers fail to agree upon an umpire within fifteen days after their appointment, or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,
a judge of the Court may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer.

How monies payable
7.14 Insurance money is payable in the Province in lawful money of Canada.

Waiver
7.15(1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

Idem
7.15(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract.

Relief from forfeiture
7.16 Where there has been imperfect compliance with a statutory condition as to proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss insured against, and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.

When action may be brought
7.17 No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provision of the contract,

(a) of the loss, or

(b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as may be fixed by the contract of insurance.

NOTICES

Notice to insured
7.18(1) Subject to any statutory condition, any notice given by an insurer, when the mode thereof is not otherwise expressly provided, may be given in the case of a member or person insured by mailing it to the applicant or insured's post office address given in the

original application for insurance unless a new address has been notified in writing to the insurer.

Notice to insurer

7.18(2) Subject to any statutory condition, delivery of any written notice to an insurer, where the mode thereof is not otherwise expressly provided, may be by letter delivered at its head office or chief office in the Province, or sent by registered post addressed to the insurer, its manager or agent at such head office or chief office or to an authorized agent of the insurer.

INSURANCE AS COLLATERAL SECURITY

Insurance as collateral security

7.19(1) Where a contract of fire insurance is given as collateral security to a mortgage or vendor's lien on property, or where any such contract so given is about to expire and no specific insurer is named in the mortgage or agreement for sale, a term requiring the mortgagor or purchaser to insure is sufficiently satisfied, save as to the amount, by the production by such mortgagor or purchaser of a subsisting policy of insurance in any insurer licensed to carry on its business in the Province.

Commission to mortgagee prohibited

7.19(2) A mortgagee shall not accept or receive either directly or through an agent or employee, and no officer or employee of such mortgagee shall accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to the mortgagee as mortgagee.

Idem

7.19(3) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in the mortgagee's employ or on the mortgagee's behalf, in consideration of effecting a contract of insurance or renewal thereof, under which contract loss, if any, is payable to the mortgagee as mortgagee.

Offence

7.19(4) Any insurer or other person who contravenes the provisions of this section is guilty of an offence.

Assignment of premium refund

7.20(1) Where an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

Idem
7.20(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section.

Sub-Part B: MARKET CONDUCT, COMPLAINT HANDLING AND DISCLOSURE

Definition
7.21 In this Sub-Part,

"market conduct activities" means activities that are carried out in the course of or for the purpose of the marketing, sale or distribution to the public of, or the performance of, any contract of insurance or service that an insurer, agent, broker or adjuster offers to the public.

Designated Person
7.21.1 [18] An insurer shall have a clearly documented consumer complaints process and designate an officer of the company to be responsible for this process.

POINT OF SALE DISCLOSURE TO LIFE INSURANCE APPLICANT

Applicant must receive full, true and plain disclosure
7.21.2(1) At point of application every applicant for life insurance must receive full, true and plain disclosure of the risks and benefits of the insurance product being purchased which is sufficient to enable the applicant to make an informed purchasing decision

Disclosure includes
7.21.2(2) Full, true and plain disclosure includes
  (a) relevant marketing materials
  (b) sales illustrations specific to the policy purchased by the applicant
  (c) a product summary document as may be prescribed, and
  (d) any other documentation or information as may be prescribed.

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[18] Clarify the relationship with the Ombudservice Network (CCIR)

Applicant must receive point of sale disclosure documents

7.21.2(3) The original or a true duplicate copy of the point of sale disclosure documents as contemplated by subsection (2) shall be signed and dated by the insurer or by the agent or broker using or presenting the same on behalf of an insurer, and the same shall become the property of the applicant.

Insurer and agent or broker to keep copy

7.21.2(4) The original or true duplicate copy of the point of sale disclosure documents shall

(a) accompany the application and be retained by the insurer, and
(b) be retained by the agent or broker, if applicable.

When disclosure is to be made

7.21.2(5) Point of sale disclosure documents as contemplated by subsection (2) must be provided to the applicant

(a) immediately on each occasion that the same is actually presented in person to the applicant or used in any presentation in person to the applicant,
(b) otherwise within three business days of the occasion that the same is actually presented to the applicant or used in any presentation to the applicant.

Waiver ineffective

7.21.2(6) An agent, broker or insurer shall not solicit, procure or accept any actual or purported waiver of this section and any waiver solicited, procured or accepted shall not relieve the insurer, agent or broker from its obligations and liabilities under this section.

INFORMATION FOR AUTOMOBILE INSURANCE APPLICANTS

Information for applicants

7.22(1) An insurer, agent and broker shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information deemed to be part of application

7.22(2) Information supplied under subsection (1) by an insurer, agent or by a broker on behalf of an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information from brokers

7.22(3) A broker shall provide to an applicant for insurance the names of all the insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

Request for written information
7.22(4) The broker shall provide the information referred to in sub-section (3) in writing if the applicant so requests.

OFFENCE

Offence
7.23 Each failure to comply with the requirements of this Sub-Part shall constitute a separate offence.

REGULATIONS

Regulations
7.24 The Minister may make regulations,

(a) prescribing information to be given to applicants or to insureds under this Sub-Part, including the disclosure to the insured of amounts paid under contracts of insurance to third parties;
(b) exempting any person from the requirements, in whole or in part, under this Sub-Part ;
(c) regarding market conduct and due diligence requirements with respect to insurers and intermediaries; and
(d) with respect to any other matter to better effect and administer consumer protection.

Sub-Part C: INTERMEDIARIES

Division 1 - AGENTS, BROKERS and ADJUSTERS

LICENCES OF AGENTS AND BROKERS

Licensing authority
7.25(1) The Superintendent may issue to a person who has complied with the requirements of this Part and the Regulations, a licence or licences of the kind or kinds set out in this Part.

Prohibition
7.25(2) No person shall act, or offer or undertake to act, or represent themself, or carry on business as an insurance agent, broker or adjuster or in any other form or manner in

the Province or with respect to any provincial risks or losses located in the Province unless the person holds a subsisting licence issued under this Act or is otherwise authorized to do so or is exempt under this Act or the Regulations.

Fees

7.26(1) The Minister may prescribe the fees payable by any agent, broker or adjuster for services provided by the Superintendent or for applying for licence or renewal of licence under this Act, and such fees shall be payable before a licence or renewal of licence is issued.

Limitations or conditions

7.27 The licence shall be subject to the Act, Regulations and any terms, limitations and conditions as the Superintendent may prescribe.

Partnership or corporation licence

7.28 A licence issued to a partnership or corporations shall be in the name of the partnership or corporation.

Classes of licences

7.29(1) Licences shall be issued as prescribed in the Regulations

Issue of licence[19]

7.29(2) Upon due application of a person who has satisfied all of the requirements for licensing the Superintendent shall, if satisfied that the applicant is a suitable person to receive a licence and intends to hold himself, herself or itself out publicly and carry on business in good faith, issue to the applicant a licence or licences to act and carry on business as an insurance agent or an insurance broker in the Province.

Notice of termination of appointment[20]

7.29(3) Notice in writing upon a form furnished by the Superintendent shall, forthwith but in any event not later than within 15 days, be given by an insurer to the Superintendent of the termination, with the reason therefor, of any contract appointing the person to act on behalf of the insurer .

Revocation

7.30(1) A licence issued under this Part may be revoked or suspended by the Superintendent if, after due investigation and after having given the licensee an opportunity to be heard, the Superintendent determines that the licensee,

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[19] It is not intended for this provision to impair an applicant's rights where the Superintendent has refused a license under sections 7.29 (2) or (3)

[20] See Division re sponsorship sections 7.41(1-6)

(a) has contravened any provision of this Act or the Regulations in the licensee's operations as an insurance agent or broker;
(b) has made a material misstatement in the application for the licence;
(c) has been guilty of a fraudulent practice;
(d) has demonstrated incompetence or untrustworthiness to transact the insurance agency or insurance brokerage business for which the licence was granted, by reason of anything done or omitted in or about such business under the authority of the licence;
(e) has employed upon salary or otherwise any person whose application for licence as an insurance agent or broker has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the Superintendent, or;
(f) has contravened any provision prescribed in the regulations.

Advisory board [21]

7.30(2) In determining the granting or refusal of an application for a licence or to revoke or suspend an existing licence or the reinstatement of any suspended or revoked licence, the Superintendent may, appoint an advisory board consisting of,
(a) a representative of insurers;
(b) a representative of agents or brokers; and
(c) a representative of the Superintendent,
which shall provide the applicant or licensee an opportunity to be heard and make a report to the Superintendent with such recommendation as it considers fit and the Superintendent shall take the report into consideration in making a decision pursuant to this section.

Board chair

7.30(3) The representative of the Superintendent upon the advisory board shall act as chair of the board and, for the purposes of his or her duties in connection with the investigation and hearing contemplated by this Part, has the same powers as are vested in the Superintendent by section 1.7

7.30(4) Upon the revocation or suspension of a license the Superintendent shall notify the licensee in writing of such revocation or suspension and may publish a notice of such revocation or suspension in such manner as the Superintendent may deem necessary for the protection of the public.

Term of licence

7.31(1) The Superintendent may issue a licence for a period of time the Superintendent considers appropriate

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[21] The Advisory Boards provisions are not acceptable to all jurisdictions, language in the Act is intended to be permissive only of advisory boards

Filing Requirements

7.31(2) A licence remains in effect, subject to filing of annual reports and payment of annual fee as prescribed by the Minister, and subject to the qualifications and the requirements of the Act and regulations until it is suspended, revoked or cancelled under this Act

Variation of licence terms and conditions

7.31(3) Despite any other provision, the Superintendent may, at any time and in respect of any licence of an agent, broker or adjuster,

(a) set or vary a term for a licence;
(b) impose any conditions, limitations or prohibitions that the Superintendent considers appropriate relating to the carrying on of the insurer's business; or
(c) vary, amend or revoke any condition, limitation or prohibition to which the licence is subject.

Exempt from licencing

7.32(1) A collector of insurance premiums who does not solicit applications for or the renewal or continuance of insurance contracts, or act or aid in negotiating such contracts or the renewal or continuance thereof, or any person who performs administrative duties only and does not give advice respecting insurance products may carry on such activities without a licence issued pursuant to this Sub-Part.

7.32(2) An officer or a salaried employee of the head office of a duly licensed fraternal society , who does not receive commission, may, without a licence, solicit insurance contracts on behalf of the society.

7.33(1)[22] The Superintendent may issue a restricted insurance agents licence to an individual who engages in the solicitation and enrollment of individuals not in an employee-employer relationship into group insurance products

7.33(2) A restricted insurance agents licence authorizes the holder and the holder's employees to act or offer to act, subject to prescribed conditions and restrictions, as an insurance agent in respect of classes or types of insurance specified by the Superintendent

7.34 Where the words "insurer" or "licensed insurer" appear in this Part, they include a Chief Agent acting in the capacity as a provincial representative of an insurer.

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[22] The conditions of restricted licenses will be specified in regulations with the intent that individuals be licensed through financial institutions (e.g., banks) rather than licensing institutions.

7.37 Subject to section 7.41 a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to such person of a licence under this Part.

LICENCES OF INSURANCE ADJUSTERS

7.38(1) The Superintendent may, upon the payment of a fee prescribed by Regulation, issue to any person who applies in the form prescribed by Regulation and complies with the requirements of this Act and the Regulations, a licence as prescribed by Regulation authorizing that person to act as an adjuster.

7.38(2) A licence issued under this section is effective for such period of time as is prescribed by Regulation, unless sooner revoked or suspended, and may be renewed in accordance with the Regulations.

7.38(3) The Superintendent may, for cause shown and after giving the licensee an opportunity to be heard, suspend or revoke a licence, whether under suspension or not; and the Superintendent shall notify the licensee in writing of such suspension or revocation.

7.38(4) The Superintendent may grant a temporary licence to an adjuster from another jurisdiction to act within the Province where in the Superintendent's opinion an emergency situation requires that the adjuster be granted such a licence.

LICENCES OF PARTNERSHIPS

7.39(1) Licences as agents, brokers or adjusters may be issued to partnerships on the conditions hereinbefore specified for the issue of such licences to individuals except as otherwise provided in this section.

7.39(2) Each member of the partnership shall file the statement or application and pay the fee required by this Act, including a written request that the licence be issued in the name of the partnership.

7.39(3) If the partnership is terminated prior to the expiration of the licence, the partners shall forthwith give notice to the Superintendent, who shall thereupon revoke the licence.

7.39(4) Any member of a partnership licensed under this section who contravenes any of the provisions of this Act is guilty of an offence.

7.39(5) Except as otherwise provided in this section, the partnership named in the licence and any partners of the partnership named in the licence are subject to the provisions of this Act with respect to agents, brokers and adjusters

LICENCES TO CORPORATIONS

7.40(1) Licences as agents, brokers, adjusters may be issued to any corporation that carries on business solely as an insurance agent, broker or adjuster, or for that and other purposes that the Superintendent expressly approves of.

7.40(2) Except as otherwise provided in this section, the corporation named in the licence and officers and directors of the corporation named in the licence are subject to the provisions of this Act with respect to agents, brokers and adjusters.

7.40(3) Any corporation licensed under this section shall forthwith notify the Superintendent in writing of the dissolution or revocation of the charter of the corporation and upon receipt of such notice the Superintendent shall forthwith revoke the licence.

7.40(4) Any corporation licensed under this section shall forthwith notify the Superintendent in writing of any change to the officers or directors of the corporation.

7.40(5) Every officer or director of a licensed corporation who contravenes any of the provisions of this Act is guilty of an offence and personally liable therefor, although such contravention is committed in the name and on behalf of the corporation, and the corporation is liable for any such contravention the responsibility for which cannot be placed upon any such officer.

SPONSOR REQUIRED

7.41(1) No individual may obtain a licence to enter the insurance field to sell products unless that person is sponsored by an insurer, agent, or broker

7.41(2) No individual may obtain a licence to enter the insurance field to adjust claims under a contract of property and casualty insurance unless that person is sponsored by an adjuster.

7.41(3) Sponsorship will remain a licensing requirement until the individual has obtained a prescribed level of education and has held a licence for a prescribed number of years.

7.41(4) A licensed individual may be a sponsor if he/she meets the requirements of a designated representative.

7.41(5) Partnerships and corporations will be granted a licence only where it has a designated representative who holds a licence and who will be responsible for its operations, including sponsorship.

7.41(6) There is no sponsorship requirement for agents, brokers, or adjusters that are partnerships or corporations.

DESIGNATED REPRESENTATIVE

7.42 All licensed insurers, agents, brokers, and adjusters that are partnerships or corporations shall:

(a) appoint a designated representative, who is a licensed individual, and give that individual the authority to carry out the sponsorship function on their behalf;
(b) notify the regulator of whom their designated representative is;
(c) ensure the designated representative meets the requirements prescribed by regulations; and
(d) provide the regulator with an undertaking that the insurer, agent, broker, or adjuster will be responsible to the consumer and the regulator for all actions of a sponsored licensee in relation to the licensed activity

DESIGNATED REPRESENTATIVE RESPONSIBILITIES

7.43 Designated representatives are required to:

(a) give the Superintendent an undertaking confirming they accept and acknowledge their responsibilities as a designated representative;
(b) certify to the Superintendent that the applicant for a licence is a suitable person to be in the industry;
(c) ensure the licensee is adequately supervised;
(d) ensure the licensee is qualified to sell the products being offered to the public;
(e) ensure the licensee responds promptly and completely to enquiries by the Superintendent;
(f) report unethical or improper conduct of the licensee to the Superintendent;
(g) report and provide reasons for the termination of any sponsorship arrangement to the Superintendent within 15 days of any such termination; and
(h) ensure the licensee adheres to any conditions or restrictions imposed on their licence.

REQUIREMENT TO CARRY INSURANCE

7.44 Every licensee shall be covered by a policy of error and omissions insurance including fraud coverage and other prescribed insurance, the amounts prescribed by regulations.

GENERAL

7.45 Payments in cash in whole or in part to an agent of an insurer of the amount of a premium or assessment due in respect of a contract issued by such insurer, shall be deemed a payment to the insurer, notwithstanding any condition or stipulation to the contrary.

7.46 No person, who not being duly licensed as an agent, broker, adjuster, shall represent or hold to the public as being such an agent, broker, adjuster or as being engaged in the insurance business, by means of advertisements, cards, circulars, letterheads, signs or other methods or, being duly licensed as such agent, broker or adjuster advertises as aforesaid or carries on such business in any other name than that stated in the licence.

7.47 The Superintendent may prepare, or cause to be prepared, published and distributed, annually or at more frequent intervals, a list of persons to whom licences have been issued, revoked and suspended under this Act.

7.48(1) All funds received or receivable by an agent or broker in the course of the business of that agent or broker

- a) on behalf of an insurer from members of the public, less the commission and other deductions authorized by the insurer in writing; and
- b) on behalf of members of the public from an insurer,

are considered to be trust funds.

7.48(2) An agent or a broker shall not assign, pledge, hypothecate, mortgage or in any other way charge the funds referred to in subsection (1) whether or not those funds have been received or remain receivable.

7.48(3) An assignment, pledge, hypothecation, mortgage or other charge of or on funds referred to in subsection (1) is void against the beneficial owner of the funds.

7.48(4) Subsections (1), (2), and (3) do not apply to negotiable instruments payable directly to an insurer.

7.49(1) An agent or broker who receives trust funds shall
- (a) have at least one account for deposits in an institution that is authorized to accept deposits, which is insured by the Canada Deposit Insurance Corporation and in any other deposit institutions which the Minister may prescribe, and such account shall be designated as a trust account both in agent or broker's books and in the records of the institution, or
- (b) remit to the beneficial owner of the funds, not later than 3 business days following the day on which the funds are received .

7.49(2) An agent or broker shall, immediately upon receipt, pay into the trust account referred to in subsection (1) any money or other consideration held or received on account of an insurer or an insured.

7.49(3) An agent or broker who acts in negotiating, renewing or continuing a contract of insurance with a licensed insurer and who receives from an insured any money or other consideration as a premium for such contract shall, after the expiry of any period of time stipulated in an agreement between the agent or broker and an insurer for payment of funds to the insurer by the agent or broker, pay such premium over to the insurer within fifteen days after written demand made upon the agent or broker therefor, less any commission and any deductions to which, by the written consent of the insurer, the agent or broker is entitled.

7.49(4) An agent or broker who receives any money or premium credit from an insurer or general agent which represents return premium due an insured shall pay such return premium over to the insured within fifteen days after written demand made upon the agent or broker therefor, plus any unearned commission or other refund to which the insured is entitled, less any outstanding fees.

7.49(5) If an agent or broker fails to pay a premium over to an insurer under subsection (4) or fails to pay a return premium over to an insured under subsection (5), such failure shall be evidence that the agent or broker has applied such premium or return premium to their or its own use or to a use contrary to the trust.

INSURANCE PREMIUM FINANCING AGREEMENTS

7.49.1(1) In this Section,

"Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements, or acquiring insurance premium finance agreements from other insurance premium finance companies, and

"Insurance premium finance agreement" means an agreement by which an insured, or prospective insured, promises to pay to an insurance premium finance company the amount advanced or to be advanced under such agreement to an insurer or to an insurance agent or broker, in payment of a premium or premiums on an insurance contract or contracts.

7.49.1(2) Where an insurance premium finance agreement contains a power of attorney enabling the insurance premium finance company to cancel an insurance contract or contracts listed in such agreement, such contract or contracts shall not be canceled by the insurance premium finance company until after notice has been given to the insured in accordance with this section.

7.49.1(3) The insurance premium finance company shall give

(a) 15 days notice of its intention to cancel the insurance contract or contracts by registered mail, addressed to the insured's last know address as shown on the records of the insurance premium finance company, or

(b) 5 days written notice of its intent to cancel the insurance contract or contracts personally delivered .

7.49.1(4) The 15 days mentioned in subsection (3) starts to run on the day following the receipt of the registered letter at the post office to which it is addressed.

7.50(1) In this section, "fee" does not include premiums payable under a contract of insurance.

7.50(2) No agent or broker may charge or collect a fee for providing a service to a person who is or is in the process of acquiring insurance through the agent or broker unless the person has agreed in writing, before the service is provided, to pay the fee.

7.50(3) No agent or broker may cancel a contract of insurance because of unpaid fees charged pursuant to this section.

7.51 An agent or broker shall keep such books, records and accounts in connection with the business as may be necessary to show and readily distinguish

(a) all money received from or on behalf of and all money paid to or on behalf of each insurer and insured, and

(b) all money received and paid on the agent or broker's own behalf, and all such books, records and accounts shall be kept up to date.

7.52 Every insurer and every agent and broker shall make a return under oath to the Superintendent in such form and at such times as the Superintendent requires, showing all persons duly authorized as its or their agent in the Province, and of persons to whom has been paid or allowed or agreed to be paid or allow directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in the Province, or negotiating the continuance or renewal thereof, or for attempting to do so.

7.53(1) No insurer licensed under this Act, and no officer, agent or employee of such an insurer, and no insurance agent or broker authorized under this Act, shall directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person for acting or attempting or assuming to act as an insurance agent or broker in respect of insurance in the Province or for having or claiming or appearing to have any influence or control over the insured or prospect for insurance unless that person holds at the time a subsisting insurance agent's or broker's licence or is a person otherwise exempt from licencing under this Part.

7.53(2) An agent or broker who at the time of receipt or making of an application for insurance, does not hold a subsisting licence, shall not retain or deduct anything on account of commission from any payment made to the agent or broker in respect of such application, and shall remit to the insurer the full amount paid and received on account of any premium or otherwise.

7.53(3) Nothing in this Act shall be construed so as to prevent an insurer from compensating a *bona fide* salaried employee of its head or branch office in respect of insurance issued by the employing insurer upon the life of such employee or so as to require that such employee shall be licensed as an agent to effect such insurance.

7.53(4) No insurer and no officer, employee or agent thereof, and no broker, shall, directly or indirectly, make or attempt to make any agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow to give, or offer or agree to pay, allow or give, any rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value, to any person insured or applying for insurance in respect of life, person or property in the Province.

7.53(5) Nothing in this section affects or is applicable to any payment by way of dividend, bonus, profit or savings that is expressly provided for by the policy.

7.54 No person licensed as an agent for life insurance under this Act shall induce, directly or indirectly, an insured to lapse, forfeit or surrender for cash, or for paid up or extended insurance, or for other valuable consideration, their or its contract of life insurance with one insurer in order to effect a contract of life insurance with the same insurer or another insurer, or make any false or misleading statement or representation in the solicitation or negotiation of insurance, makes or delivers any incomplete comparison of any policy or contract of insurance with that of the same or any other insurer, or coerce or propose, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a business or a professional relationship or otherwise, to give a preference in respect to the placing of life insurance which would not be otherwise given in the effecting of a life insurance contract.

7.55 An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through the agent or broker directly or indirectly with any insurer not licensed to undertake insurance in the Province, in the same manner as if such agent or broker were the insurer.

SPECIAL BROKER'S LICENCES FOR BUSINESS WITH UNLICENCED INSURERS

Special licence

7.56(1) he Superintendent may, upon the payment of the prescribed fee, issue to any suitable person a licence to act as a special insurance broker to negotiate, continue or renew contracts of insurance in the Province with insurers not authorized to transact such business in the Province.

7.56(2) The applicant for such licence shall file with the Superintendent a written application under oath giving such information as may be prescribed by the Regulations and such further information as the Superintendent requires and if the Superintendent is satisfied that the person is a suitable person to receive a licence, the Superintendent may issue a licence, and it shall expire at such time as the Regulations provide, unless sooner suspended or revoked.

7.56(3) Such licence may, in the discretion of the Superintendent, be renewed for each succeeding year upon payment of the prescribed fee and upon provision of such information, if any, as the Superintendent may require without requiring anew the detailed information required in the case of an original application.

Licence suspension or revocation

7.56(4) The Superintendent, for cause shown similar to any of those entitling the Superintendent to revoke the licence of an agent, may suspend or revoke the licence of a special insurance broker.

7.57(1) Where sufficient insurance on property in the Province at reasonable rates of insurance in the form required by the insured cannot be obtained by the insured from insurers licensed to do business in the Province, a special insurance broker, duly licensed, may effect insurance with unlicenced insurers, but shall in the case of every contract so effected obtain from the insured a signed and dated statement describing the property insured, its location and the amount of insurance required, and stating that the insurance cannot be obtained in licensed companies at reasonable rates and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in the Province.

7.57(2) Every such broker shall keep a separate account of insurance effected by the broker under such licence in books in the form prescribed by the Superintendent, which books shall be open to inspection at any time by the Superintendent.

7.57(3) Within sixty days after the end of each calendar year every such broker shall make to the Superintendent a return, in the form and manner prescribed, containing particulars of all insurance effected by the broker under this section during such year.

7.57(4) In respect of all premiums on insurance effected under a special broker's licence, the licensee shall pay to the Province such taxes as would be payable if such premiums had been received by a licensed insurer.

Prohibited activities and personal liability

7.58 A special insurance broker licensed under this Act shall not accept applications for insurance with unlicenced insurers other than only from the insured or another licensed special insurance broker and shall not receive any such application from, or pay or allow compensation or anything of value in respect of such application to, any person not licensed as a special insurance broker under this Act and any contract of insurance with an unlicenced insurer made by or through an agent or broker not licensed as a special insurance broker under this Act shall be deemed to be unlawfully made.

Division 2 - COUNCILS [23]

Definition

7.59(1) In this Act
"council" means an insurance council established pursuant to this Part.

Insurance council

7.59(2) The Minister may, by regulation, provide for the establishment of an insurance council or councils and for the eligibility, appointment of or election of members to the councils.

7.59(3) One or more councils may be established and reestablished as deemed appropriate by the Minister on provincial, regional or national basis, and any council may be comprised of one or more classes of members.

Powers and duties of council

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[23] This division is an enabling provision only and no decision to authorize councils has been made in any jurisdiction. No council will be established without further stakeholder consultation.

7.59(4) The Minister may make Regulations prescribing the corporate form, functions, powers and duties of a council established pursuant to subsection (2) and governing the carrying out of those functions and duties and the exercise of those powers.

Powers of a council

7.59(5) Without limiting the generality of subsection (3), the Minister may grant to a council, on any terms and conditions that the Minister considers appropriate, the power to

(a) accept and exercise powers, functions and responsibilities delegated to it by the Superintendent;
(b) administer the educational, training and other standards and qualifications required for licensing of agents, brokers and adjusters;
(c) establish and enforce ethical, operational and trade practices for agents, brokers and adjusters;
(d) receive and investigate complaints and adjudicate or mediate disputes regarding services provided by an agent, broker or adjuster;
(e) initiate and undertake prosecutions of members for violations, non-compliance or offences;
(f) make recommendations to government;
(g) fix and collect license, or other fees and special fees from applicants, and licensees in the insurance industry that are necessary to allow the council to finance the exercise of its assigned powers;
(h) initiate and engage in programs of consumer protection;
(i) sub-delegate its powers to sub-councils or committees;
(j) make by-laws necessary for its efficient functioning; and
(k) exercise such other powers and perform such other duties as are prescribed by the Regulations.

Approval by Superintendent

7.60 No by-law, resolution or rule of any council and no amendment, revision or consolidation of the by-laws, resolutions or rules of any council shall come into effect unless and until it is approved by the Superintendent.

Review of decision by Superintendent

7.61 Every decision and action of a council is subject to review by the Superintendent on the Superintendent's own initiative or at the request of any interested person.

Suspension or termination of council

7.62(1) The Superintendent may make an order suspending, terminating or imposing terms and conditions on any council if, the Superintendent considers that action to be in the public interest

Opportunity to be heard

7.62(2) Subject to subsection (3), no order shall be made under subsection (1) unless the council affected has been given an opportunity to be heard by the Superintendent.

Temporary suspension order

7.62(3) If the Superintendent is of the opinion that any delay could be prejudicial to the public interest, the Superintendent may make a temporary order under this section suspending the Council without providing an opportunity to be heard.

Period of temporary order

7.62(4) A temporary order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Superintendent.

Extension of temporary order

7.62(5) The Superintendent may extend a temporary suspension order until the hearing is concluded if a hea6ring is commenced within the fifteen-day period.

Immunity

7.63 No action or other proceeding for damages shall be instituted against a Council, a council committee, any member of the council or committee, or any officer, servant, agent or appointee of the Council, for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a Regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

Exclusive jurisdiction

7.64 If a proceeding is conducted under this Act or the Regulations before a member or committee of the council, the member or committee has exclusive jurisdiction to exercise the powers conferred on the member or committee under this Act and the Regulations and to determine all questions of fact or law that arise in the proceeding.

Certificates

7.65 A council may issue a certificate,

(a) stating that on a stated day a person was or was not licensed under this section, or that the licence was renewed, suspended or revoked on a stated day;
(b) stating that a copy of, or extract from, a document or thing in the custody of the organization is a true copy of, or extract from, the original; or
(c) stating whether a document or notification was received or issued by the Council.

Organization documents as evidence

7.66(1) A certificate, licence, order, decision, direction, inquiry or notice under this Act that purports to be signed on behalf of a council established under this Part shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it.

True copies as evidence
7.66(2) A true copy certified by an organization under clause (7.62(b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

Annual report of Superintendent
7.67 The Superintendent shall make an annual examination of the affairs of every Council established under this Part and shall report concerning the examination to the Minister.

Regulations
7.68 The Minister, upon consultation with the affected council and in the public interest, may make Regulations,

(a) prescribing requirements, qualifications and terms and conditions for the granting or renewal of licences;
(b) providing for exemptions from licencing for any person or group of persons;
(c) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;
(d) prescribing the grounds upon which a licence may be revoked, suspended or not renewed;
(e) governing reports by a council on the suitability of an applicant or licensee to carry on business as an agent or broker;
(f) requiring insurers that authorize agents or brokers to act on their behalf to establish and maintain a system to screen each agent or broker and supervise activities of each agent;
(g) authorizing and regulating the exchange of personal information within the meaning of the [Freedom of Information and Protection of Privacy Act} for the purposes of this Act between the Superintendent and a council;
(h) prescribing standards of practice and duties of agents, brokers and adjusters who hold licences, including prescribing a code of ethics;
(i) requiring and regulating trust accounts and trust records to be maintained by intermediaries;
(j) governing the receipt and investigation of complaints against members who hold licences issued by a council;
(k) governing the discipline of agents, brokers and adjusters who hold licences, including authorizing a council to impose fines, issue letters of reprimand and suspend or revoke agents' licences;
(l) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents and brokers;

(m)requiring agents, brokers and adjusters who hold licences within the class of licences referred to in clause (2) (a) to supply information and make returns to a council;
(n) requiring that agents, brokers and adjusters who hold licences within any specified class of licences carry errors and omissions insurance, furnish a fidelity bond or belong to a compensation fund, and fixing the amount, form, requirements and terms thereof;
(o) regulating the replacement of an existing contract of life insurance by another contract of life insurance; and
(p) respecting any matter necessary or advisable for the effective operation of a council.

Sub-Part D: UNFAIR, DECEPTIVE and PROHIBITED ACTS and PRACTICES

ACTS AND PRACTICES

Definitions
7.69 For the purposes of this Part,

"**unfair or deceptive acts or practices**" includes,
(a) the commission of any act prohibited under this Act or the Regulations,
(b) any unfair discrimination between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged by it for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable thereon or in the terms and conditions thereof,
(c) any unfair discrimination in any rate or schedule of rates between risks in the Province of essentially the same physical hazards in the same territorial classification,
(d) any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, terms, benefits or advantages of any policy or contract of insurance issued or to be issued,
(e) any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued,
(f) any incomplete comparison of any policy or contract of insurance with that of any other policy or contract of insurance for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract,
(g) any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance upon which a sales commission is payable to such person, unless the purchaser of insurance has agreed in writing to the premium allowance or

fee before the service is provided(h) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,

(i) a tied selling practice prohibited by regulations,

(j) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use,

(k) issues or uses any policy, form or application which is unfair, fraudulent, or not in the public interest, or

(l) any other or further activity or failure to act that the Superintendent rules as an unfair or deceptive act or practice under section 7.63.

Superintendent may make rules[24]

7.70(1) The Superintendent may, with the approval of the Minister, make rules with respect to what an unfair or deceptive act or practice includes.

7.70(2) [25]A rule made under subsection (1) shall have the same effect as subordinate legislation but is not subordinate legislation within the meaning of the*(Statutes and Subordinated Legislation Act)*

7.70(3) A rule made under subsection (1) shall be effective on the day it is approved by the Minister, an a copy of it shall be kept on file with the Superintendent, and shall be available for inspection by the public at all reasonable times and a notice of the rule will be published in the Gazette.

7.70(4)[26] A rule made under this section is not invalid by reason only that it was not published in the *Gazette*, but a person shall not be convicted of an offense consisting of a contravention of a rule which at the time of the alleged contravention was not published in the *Gazette* unless it is proven that at the date of the alleged contravention reasonable steps had been taken under subsection (3) to make the rule accessible to those persons affected by it.

7.70(5) Where there is a conflict between the rules made by the Superintendent under this section and regulations made by the Lieutenant-Governor in Council under this Act, regulations made by the Lieutenant Governor in Council shall apply to the extent of the inconsistency.

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[24] Legislative drafters will need to clarify that Superintendents will retain the right to prohibit deceptive acts and practices through their rule making authority of section 1.1(2). Consideration must be given to the potential of deharmonization through unilateral rule making authority.

[25] Need to clarify the definition of "rules" and authority to make rules

[26] All provinces agree that a notice of the rule will be published in the Gazette. Legislative drafters will need to review the legality of rules where notice only appears in the Gazette.

Prohibitions

7.71(1) No person shall engage in any unfair or deceptive act or practice in relation to the business of insurance

7.71(2) In any case where a person uses a document, materials, or application, or issues a policy that, in the opinion of the Superintendent, is unfair, fraudulent, or not in the public interest, and after hearing the person, the Superintendent may by order prohibit their use or issuance

7.71(3) A person shall not use any document, materials, or application and shall not issue any policy that has been prohibited from use or issuance under subsection 2.

Superintendent may investigate

7.72(1) The Superintendent may examine and investigate the affairs of every person engaged in the business of insurance, directly or indirectly, in order to determine whether such person has been, or is, engaged in any unfair or deceptive act or practice in the Province.

Insurer to file materials, forms and applications

7.72(2) At the request of the Superintendent, a person shall file with the Superintendent a copy of all or any documents or materials, policy forms and forms of application issued or used by the person.

Prohibition of certain policies

7.73(1) In any case where a person uses a document or materials, or uses an application, or issues a policy that, in the opinion of the Superintendent, is unfair, fraudulent or not in the public interest, and after the person has had the opportunity to be heard the Superintendent may by order prohibit the person from issuing or using such document or materials or form of policy or application.

Offence

7.73(2) An person, after being so prohibited, shall not use any such document or materials and shall not issue any such policy or any such application.

Superintendent's orders

7.74(1) If, in the opinion of the Superintendent, a person has committed or is committing any act, or has pursued or is pursuing any course of conduct, that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention and, after giving the person the opportunity to be heard, to order the person,

(a) to cease or desist from doing any act or pursuing any course of conduct identified by the Superintendent;

(b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
(c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Interim order
7.74(2) Despite subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time the person has requested an opportunity to be heard.

When order may be made
7.74(3) If no opportunity to be heard is requested within the time set out in subsection (2) or (3), or upon hearing the person the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Opportunity to Heard
7.74(4) A request for an opportunity to be heard under subsection (3) shall be in writing and served on the Superintendent.

Extension of order
7.74(5) If an opportunity to be heard is requested under subsection (3), the Superintendent may extend any order until the opportunity to be heard is concluded.

No stay pending opportunity to be heard or appeal
7.74(6) A request for an opportunity to be heard or any appeal from a temporary, interim or a permanent order of the Superintendent or Court shall not operate to stay in whole or in part the order of the Superintendent or Court, unless a Court or the Superintendent expressly provides otherwise.

Order modification, alteration or revocation
7.74(7) The Superintendent may at any time, without holding a hearing, revoke, alter or modify an order made under this section.

OFFENCE

Offence

7.75 Each failure to comply with the requirements of this Part shall constitute a separate offence.

Sub-Part E: REGULATIONS

Regulations

7.76(1) The Minister may make regulations,

(a) prescribing requirements, qualifications and terms and conditions for the granting of licences;

(b) prescribing a classification system for licences, the conditions and restrictions pertaining to each class of licence, and the activities authorized by each class of licence;

(c) providing for exemptions from licensing for any person or group of persons;

(d) prescribing the grounds upon which a licence may be revoked or suspended for the purposes of clause 7.30(1)(f);

(e) governing reports by insurers to the Superintendent on the suitability of an applicant or licensee to carry on business as an agent or broker;

(f) requiring insurers that authorize agents or brokers to act on their behalf to establish and maintain a system to screen each agent or broker and supervise activities of each agent;

(g) governing the exchange of personal information within the meaning of *Freedom of Information and Protection of Privacy Act* [27] for the purposes of this Act;

(h) prescribing standards of practice and duties of agents, brokers and adjusters who hold licences within the class of licences, including prescribing a code of ethics;

(i) governing the discipline of agents, brokers and adjusters in respect of fines, letters of reprimand and suspension or revocation;

(j) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents and brokers;

(k) requiring agents, brokers and adjusters to supply information and make returns to the Superintendent;

(l) requiring that agents, brokers and adjusters who hold licences within the class of licences referred to carry errors and omissions insurance, furnish a fidelity bond, and fixing the amount, form, requirements and terms thereof;

(m) governing the replacement of an existing contract of life insurance by another contract of life insurance;

(n) prescribing forms and providing for their use;

(o) prescribing terms and conditions under which a council may be established;

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[27] Drafters will reference the name of the relevant Act

(p) prescribing powers and duties of council;
(q) governing the maintenance of records by a council;
(r) governing the content and type of reports by a council to the Superintendent relating to the council's activities;
(s) prescribing procedures to be followed by a council, including authorizing the awarding of costs in a hearing conducted by the council or by a committee of the council;
(t) prescribing standards of conduct, mandatory and prohibited activities with respect to the use of electronic, and telecommunications mediums;
(u) prescribing standards of conduct, mandatory and prohibited activities in mass and group marketing;
(v) defining any word or expression used but not defined in this Part;
(w) prescribing techniques or forms of authentication of a document or electronic document;
(x) prescribing requirements for designated representatives for the purposes of Section 7.42 and 7.43; and
(y) respecting any matter necessary or deemed advisable to carry out effectively the intent and purpose of this Part.

General or particular
7.76(2) A Regulation may be general or particular.

Scope of Regulations
7.76(3) Regulations made under this section are in addition to the provisions of this section, even if the Regulations concern a matter provided for in this section.

Regulations Act
7.76(4) The exercise of the authority contained in subsection (1) shall be Regulations within the meaning of the *[Regulations Act]*.

Part 8 - GENERAL INSURANCE

Sub-Part A: FIRE INSURANCE

Definition

8.1(1) In this Part, unless the context otherwise requires, "agricultural property" includes dwelling-houses, stables, barns, sheds and outbuildings and their contents, wagons, carriages, and other vehicles, saddles and harness, agricultural engines, implements, tools, instruments, appliances and machinery, household goods, wearing apparel, provisions, musical instruments, libraries, livestock, growing crops, and crops severed from the land, fruit and ornamental trees, shrubs and plants, and live or standing timber, being upon farms as farm property, and owned by members of the insurer in which the property is insured.

Insurance with unlicenced insurers

8.1(2) No person shall knowingly insure or cause to be insured, except through a special insurance broker duly licensed, any property situate in, or described in any contract as situate in, any part of the Province, against fire loss with an insurer not licensed under the provisions of this Act, and any person who knowingly violates the provisions of this section is guilty of an offence.

Idem

8.1(3) Notwithstanding anything in this Act any person may insure property situated in the Province against fire or marine risks with an unlicenced insurer, and any property insured or to be insured under this section may be inspected and any loss in respect thereof adjusted, if such insurance is effected outside the Province and without any solicitation whatsoever directly or indirectly on the part of the insurer.

Application of Part

8.2(1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the Province except,

(a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;
(b) where the subject matter of the insurance is rents, charges or loss of profits;
(c) where the peril of fire is an incidental peril to the coverage provided; or
(d) where the subject matter of the insurance is property that is insured by an insurer or group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

Automobiles

8.2(2) Despite subsection (1), an insurer licenced to carry on fire insurance may insure an automobile against loss or damage under a policy falling within this Part, and this Part applies to such insurance.

Extent of coverage by contract

8.3(1) Subject to subsection (4) and to clause 8.10 (a) in any contract to which this Part applies the contract shall be deemed to cover the insured property,

(a) against fire (whether resulting from explosion or otherwise) not occasioned by or happening through,
  (i) in the case of goods, their undergoing any process involving the application of heat,
  (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire;
(c) against explosion (not occasioned by or happening through any of the perils specified in subclause (a)(ii)) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

Radioactive contamination

8.3(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

Coverage where property removed

8.3(3) Where property insured under a contract covering it at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

Extended insurance

8.3(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

Power to extend meaning of "lightning" in livestock contracts

8.3(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents.

Insurer to issue policy

8.4(1) An insurer entering into a contract shall issue a policy.

Renewal of contract

8.4(2) A contract may be renewed by the delivery of a renewal receipt identifying the policy by number, date or otherwise.

Variance between application and contract

8.5 After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

Mortgagees, third parties and other payees

8.6(1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to that person.

Form of notice

8.6(2) Subject to subsection (3) the length of and manner of giving the notice under subsection (1) is the same as notice of cancellation to the insured under the statutory conditions in the contract.

Alternative notice

8.6(3) If the loss under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer and the person may enter into a written agreement to provide for alternative notice.

Statutory conditions

8.7(1) The conditions set forth in the Schedule to this sub-part shall be deemed to be part of every contract of insurance, that includes the peril of fire, in force in the Province and shall be printed in English in every policy with the heading "Statutory Conditions", and no variation or omission of or addition to any statutory condition is binding on the insured.

Definition

8.7(2) In this section, "policy" does not include interim receipts or binders.

Limitation of liability clause

8.8 A contract containing,
(a) a deductible clause;
(b) a co-insurance, average or similar clause; or
(c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional, shall have printed or stamped upon its face in red ink or bold type in a font size not less than 14 points, the words "The policy contains a clause that may limit the amount payable", failing which the clause is not binding upon the insured.

Rateable contribution

8.9(1) Where on the happening of any loss or damage to property insured there is in force more than one contract covering the same interest, each of the insurers under the respective contracts is liable to the insured for its rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

Effect of policy may not be postponed

8.9(2) For the purpose of subsection (1), a contract shall be deemed to be in force despite any term thereof that the policy will not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

Certain restrictions valid

8.9(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 8.8 or any contract condition limiting or prohibiting the having or placing of other insurance.

Ascertainment of rateable proportions

8.9(4) Nothing in subsection (1) affects the operation of any deductible clause and,
(a) where one contract contains a deductible, the proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and
(b) where more than one contract contains a deductible, the proportions of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be prorated among the insurers with deductibles and these prorated amounts shall affect the amount of recovery under those contracts.

Idem

8.9(5) Nothing in subsection (4) shall be construed to have the effect of increasing the proportional contribution of an insurer under a contract that is not subject to a deductible clause.

Insurance on identified articles

8.9(6) Despite subsection (1), insurance on identified articles is a first loss insurance as against all other insurance.

Special stipulations

8.10 Where a contract,

(a) excludes any loss that would otherwise fall within the coverage prescribed by subsection 8.3(1); or

(b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty is not binding upon the insured, if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried.

Subrogation

8.11(1) The insurer, upon making a payment or assuming liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

Where amount recovered is not sufficient to indemnify

8.11(2) Where the net amount recovered, after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively.

Regulations

The Minister may make regulations

(a) prescribing a short rate premium table for the purposes of Statutory Condition 5(3), and

(b) for the better administration, operation and enforcement of this Part.

SCHEDULE TO PART 8 SUBPART A: STATUTORY CONDITIONS

Misrepresentation

1 If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

Property of Others

2 Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

Change of Interest

3 The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy & Insolvency Act (Canada)* or change of title by succession, by operation of law, or by death.

Material Change

4 Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

Termination

5(1) This contract may be terminated,

(a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;

(b) by the insured at any time on request.

5(2) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the proportionate premium for the expired time, and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

5(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium table prescribed in the regulations for the expired time.

5.(4) The refund may be made by money, postal or express company money order or cheque payable at par.

5.(5) The fifteen days mentioned in clause (1) (a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Requirements After Loss

6.(1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,

(a) forthwith give notice thereof in writing to the insurer;

(b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,

- (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
- (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
- (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
- (iv) showing the amount of other insurances and the names of other insurers,
- (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
- (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,
- (vii) showing the place where the property insured was at the time of loss;

(c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

(d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

6.(2) The evidence furnished under clauses (1) (c) and (d) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

Fraud

7. Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

Who may give notice and proof

8. Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Salvage

9.(1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

9.(2) The insurer shall contribute proportionately towards any reasonable and proper expenses in connection with steps taken by the insured and required under subcondition (1) of this condition according to the respective interests of the parties.

Entry, Control, Abandonment

10. After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisement or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

Appraisal

11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

When Loss Payable

12. The loss is payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

Replacement

13.(1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

13.(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

Action

14. Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage occurs.

Notice

15. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Sub-Part B: LIVESTOCK INSURANCE

Application of Part

8.12. This Part applies to livestock insurance and to any insurer carrying on the business of livestock insurance in the Province.

Property that may be insured

8.13. Every insurer licensed for the transaction of livestock insurance may, within the limits and subject to the conditions prescribed by its licence, insure against loss of livestock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of any enemy or by insurrection.

Application of provisions as to fire insurance

8.14. The following provisions of *Part 8 Sub-Part A-Fire Insurance* apply to livestock insurance contracts:

1. The provisions as to the form and contents of the policy. and
2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.

Term of contract
8.15(1) A contract of livestock insurance shall not exceed the term of two years.

Renewing policies
8.15(2) A contract made for one year or any shorter period may be renewed, from time to time, at the discretion of the insurer by renewal receipt instead of by policy, on the assured paying the required premium; and all payments or renewal shall be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy is void.

Sub-Part C: WEATHER INSURANCE

Application of Part
8.16. This Part applies to weather insurance and to any insurer carrying on the business of weather insurance in the Province, but does not apply to weather insurance provided by an endorsement to a contract of fire insurance.

What may be insured
8.17. Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by its licence, insure against such atmospheric disturbances, discharges or conditions as the contract of insurance specifies.

Application of certain provisions as to fire insurance
8.18(1) The following provisions of this Part of this Act apply to weather insurance contracts:

1. The provisions as to the form and contents of the policy, and
2. The provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.

Additional conditions
8.18(2) The following additional conditions form part of every weather insurance contract:

1. The insurance may be terminated by the insurer by giving seven days notice to that effect.
2. The insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where the buildings or structures have been weakened by alterations made subsequent to the contract, unless permission to make such alterations has been previously granted in writing signed by the insurer or its authorized agent.

Term of contract
8.19. A contract of weather insurance shall not exceed the term of three years.

Sub-Part D: MARINE INSURANCE CONTRACTS[28]

*The **marine insurance** provisions have not been addressed per se or reproduced in this harmonized Model Act as per project parameters. The marine insurance Part of the Nova Scotia Act can be reenacted as is.*

This Part has been located at the very "end" of the draft harmonized Model Act in event that Nova Scotia considers it imperative to maintain marine insurance as a part of the general insurance statute and not enact a separate Act. This should not cause any issues or impediments with respect to harmonization.

Marine Insurance:

i) comprises a separate Statute in

- **B.C.** , *Insurance (Marine Act), RSBC 1979, c.203*
- **Manitoba**, *Marine Insurance Act, RSM, 1987, c.M40*
- **New Brunswick**, *Marine Insurance Act, RSNB, 1973, c.M-1.*
- **Ontario,** *Marine Insurance Act, RSC 1990 c.M-2.*

ii) exists as a separate PART of the general Insurance Act:

- **Nova Scotia**: *the Marine Insurance was originally enacted in Nova Scotia as a separate statute and came into force on April 5, 1941. In 1962 the marine insurance legislation was incorporated into Nova Scotia's general Insurance Act, and currently comprises PART IX-MARINE INSURANCE, Insurance Act, 1989, c.23.*
- **Quebec**, Civil Code of Lower Canada, Articles 2606-2692

iii) is integrated within the general overall Insurance Act provisions

- ***Alberta, Newfoundland, Prince Edward Island, Saskatchewan**, contain no specific or general marine insurance part and ubiquitous insurance provisions are applicable as the Act provides generally.*

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[28] The inclusion of marine insurance contract provisions will be determined by each province.

Part 9 - AUTOMOBILE INSURANCE

Sub-Part A: AUTOMOBILE INSURANCE CONTRACTS

INTERPRETATION

Definitions
9.1(1) In this Part

"automobile" includes a motor vehicle required under any Act to be insured under a motor vehicle policy;

"contract" means a contract of automobile insurance that ;
(a) is undertaken by an insurer that is licensed to undertake automobile insurance in the Province, or
(b) is evidenced by a policy issued in another province or territory of Canada, the United States of America or a jurisdiction designated in the Regulations;

"insured" means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in subsection 9.34(1) and subsection 9.35(1), whether or not described therein as an insured person;

occupant" in respect of an automobile, means,
- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

"spouse" [29] means either a man or a woman who.
- (a) are married to each other,
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Act, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child;

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[29] Definition of spouse to be reviewed for appropriateness and fit with provincial legislative regime

Transition
9.1(2) This Part applies only to contracts providing automobile insurance made or renewed in the Province on or after the first day of January, 200x.

Application of Part
9.3(1) This Part does not apply to contracts insuring only against,
(a) loss of or damage to an automobile while in or on described premises,
(b) loss of or damage to property carried in or upon an automobile, or
(c) liability for loss of or damage to property carried in or upon an automobile.

Idem
9.3(2) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the [*Highway Traffic Act*] unless it is insured under a contract evidenced by a form of policy approved under this Part.

Idem
9.3(3) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

9.3(4) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the [Motor Vehicle Act], unless it is insured under a contract evidenced by a form of policy approved under this Part.

9.3(5) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

APPROVAL OF APPLICATION AND POLICY FORMS

9.4(1)[30] No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of mandatory automobile insurance other than in a form approved by the Superintendent or as may be prescribed by the Regulations.

9.4(2) An insurer may require additional information in an approved application form, but such additional information does not constitute part of the application for the purposes of section 9.7.

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[30] A new section will have to be drafted to reflect approval of a policy containing minimum coverages and a prohibition against doing less than the minimum

9.4(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he or she may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

9.4(4) Except as to matters mentioned in section 9.15, the Superintendent may, if he or she considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

9.4(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement.

9.4(6) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general, and that, for the purposes of section 9.6 shall be the "standard owner's policy".

9.4(7) The Superintendent may amend the form of owner's policy approved under subsection (6).

9.4(8) Where the Superintendent approves or amends the form referred to in subsection (6), the Superintendent shall cause a copy of the form or the amendment to be published in *the Gazette*, but it shall not be necessary for the Superintendent to publish in *the Gazette* endorsement forms approved for use with the standard owner's policy.

9.4(9) Unless the Superintendent specifies otherwise under subsection (10), the provisions of a form or an amendment published under subsection (8) are effective on the date they are published and

(a) shall be deemed to be incorporated in every contract in existence on that date, but
(b) do not alter the rights or obligations of any person in relation to an accident that occurs before that date.

9.4(10) The Superintendent, at the time a form or an amendment is published under subsection (7), may specify and cause to be published in the *Gazette*

(a) the date on which any or all of the provisions of the form or the amendment are effective,
(b) the circumstances to which any or all of the provisions of the form or the amendment apply, and

(c) any other matter relating to the transition from the application of the provisions of the previous form to the application of the provisions of the new form or the amendment.

9.4(11) The Superintendent may revoke an approval given under this section, and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

9.4(12) The Superintendent shall, on request of any interested insurer, specify in writing his or her reasons for granting, refusing or revoking an approval of a form.

APPLICATION AND POLICY

9.5 No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

9.6(1) A copy of the written application, signed by the insured or the insured's agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy or certificate of insurance pursuant to subsection 9.6(4) when issued by the insurer.

9.6(2) Subject to subsection (4), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract.

9.6(3) The policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification the insured informs the insurer in writing that the insured rejects the policy.

9.6(4) Where an insurer adopts the standard owner's policy, it may, instead of issuing the policy, issue a certificate in form approved by the Superintendent that when issued shall be of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown thereon by the insurer and any endorsements issued concurrently therewith or subsequent thereto, but at the request of an insured at any time, the insurer shall provide a copy of the standard owner's policy wording as approved by the Superintendent.

9.6(5) Where a certificate is issued pursuant to subsection (4), subsection (8) of this section and subsection 9.31(2) apply, *mutatis mutandis*.

9.6(6) Where an insurer issues a certificate under the provisions of subsection (5), proof of the terms of the policy may be given by production of a copy of the *Gazette* containing the form of standard owner's policy approved by the Superintendent.

9.6(7) *Prima facie* proof of the contents of the standard owner's policy may be given by the production of what purports to be an insurer's owner's policy and proof of the contents of the standard owner's policy may be given by the production of a copy thereof accompanied by a certificate purporting to be under the hand of the Superintendent that the copy is the standard owner's policy approved pursuant to subsection 9.4(6) of the *Insurance Act* which copy and certificate shall be admissible in evidence without proof of the signature or official position of the Superintendent.

9.6(8) Upon every application form and policy, there shall be printed or stamped in conspicuous type a copy of subsection 9.7(1).

9.7(1) Where,
- (a) an applicant for a contract,
  - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
  - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;
- (b) the insured contravenes a term of the contract or commits a fraud; or
- (c) the insured willfully makes a false statement in respect of a claim under the contract;

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

9.7(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

9.7(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof.

9.8(1) Subject to subsection 9.4(3), section 9.10 and section 9.47, the conditions set forth in the schedule to this Part are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading "Statutory

Conditions", and)no variation or omission of or addition to a statutory condition is binding on the insured.

9.8(2) In this section, "policy" does not include an interim receipt or binder.

9.9(1) An insurer shall not terminate a contract by virtue of *statutory condition 8* except for one or more of the following reasons:
(a) non-payment of, or any part of, the premium due under the contract or of any charge under any agreement ancillary to the contract;
(b) the insured has knowingly given false particulars of the described automobile to the prejudice of the insurer;
(c) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein; or
(d) material change in risk within the meaning of statutory condition 1.

9.9(2) Subsection (1) applies only to a contract that has been in effect for more than sixty days and that insures a natural person in respect of an automobile of the private passenger automobile, station wagon, minivan, sport utility or pickup truck type, but does not apply to a contract insuring such a person in respect of such a vehicle used in the course of carrying on a business, trade or profession.

9.9(3) Subsection (1) does not apply to an insurer running off its business where the insurer has the specific approval of the Superintendent to cancel a contract.

9.10(1) Except as otherwise provided in the contract, the statutory conditions referred to in section 9.8 do not apply to insurance coming within section 9.30, 9.31, or 9.43.

9.10(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

9.10(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

MOTOR VEHICLE LIABILITY POLICIES

9.11(1) Every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

(a) arising from the ownership, use or operation of any such automobile, and
(b) resulting from bodily injury to or the death of any person, and damage to property.

9.11(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

9.11(3) Where the insured named in the owner's policy dies, the following persons shall be deemed to be insured under the policy:

(a)the spouse of the deceased insured if residing in the same dwelling premises at the time of his death;
(b)in respect of the described automobile, a newly-acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,
  (I) any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured,
  (ii) the personal representative of the deceased insured.

9.12(1) Every contract evidenced by a non-owner's policy insures the person named therein and such other person, if any, as is specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

(a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by the insured or registered in the insured's name, and
(b) resulting from bodily injury to or the death of any person, and damage to property.

9.12(2) For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that such person has a lien on the automobile or has legal title to the automobile as security.

9.13 Insurance under sections 9.11 and 9.12 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and upon a vessel plying between ports of those countries.

9.14 Any person insured by but not named in a contract to which section 9.11 or 9.12 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

9.15 Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

(a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are deemed expedient by the insurer;

(b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;

(c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and

(d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time.

9.16 Liability arising from contamination of property being carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile.

9.17 The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability,

(a) imposed by any workmen's compensation law upon any person insured by the contract;

(b) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

9.18 The insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable,

(a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee;

(b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by or in the care, custody or control of the insured.

9.19 Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus.

9.20(1) The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that it shall not be liable while,
(a) the automobile is rented or leased to another person;
(b) the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes or for purposes incidental thereto;
(c) the automobile is used as a taxi-cab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire;
(d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
(e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

9.20(2) In paragraph (1)(b), "radioactive material" means,
(a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
(b) radioactive waste material,
(c) unused enriched nuclear fuel rods, or
(d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

9.20(3) Paragraph (1)(a) does not include the use by an employee of his automobile on the business of his or her employer and for which he or she is paid.

9.20(4) Paragraph (1)(c) does not include,
(a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
(b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;
(c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or the insured's spouse;
(d) the use by a person of the person's automobile for the carriage of a client or customer or a prospective client or customer; or
(e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

LIABILITY COVERAGE POLICY LIMITS

9.21(1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least two hundred thousand dollars exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

9.21(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss or damage to property

(a) claims against the insured arising out of bodily injury or death have priority to the extent of one hundred and eighty thousand dollars over claims arising out of loss of or damage to property; and

(b) claims against the insured arising out of loss of or damage to property have priority to the extent of twenty thousand dollars over claims arising out of bodily injury or death.

9.21(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least two hundred thousand dollars, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least two hundred thousand dollars exclusive of interest and costs, against liability for loss of or damage to property.

9.21(4) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

9.22(1) Every motor vehicle liability policy issued in the Province shall provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory of Canada, and in a jurisdiction of the United States of America

(a) the insurer shall be liable up to the minimum limits prescribed for that province or territory if those limits are higher than the limits prescribed by the policy,

(b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory, and

(c) the insured, by acceptance of the policy, constitutes and appoints the insurer as the insured's irrevocable attorney to appear and defend in any province or territory of Canada in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

9.22(2) A provision in a motor vehicle liability policy in accordance with paragraph (1)(c) is binding on the insured.

9.23(1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

9.23(2) Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

9.24 Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

9.25(1) In this section, "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act*, chapter A-19 of the Revised Statutes of Canada, 19xx

9.25(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 9.21, and

(b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

9.25(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted.

9.26(1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a Motor Vehicle Liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or the person's personal representative of any claim that the person or the person's personal representative or any person claiming through or under him or by virtue of the *Fatal Accidents Act* may have against the insured and the insurer.

9.26(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to such payment, a release from the person or the person's personal representative or any other person to the extent of such payment.

9.26(3) Where the person commences an action the court shall adjudicate upon the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

9.26(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or the defendant's insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof.

9.27(1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under paragraph 9.15(b) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Court, and the Court shall give such directions as may appear proper with respect to the performance of the obligation.

9.27(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and the insured's insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

9.27(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

9.27(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 9.15 in accordance with their respective liabilities for damages awarded against the insured.

9.28(1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any province or territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of the judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of them or itself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

9.28(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

9.28(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless the creditor's claim is one for which indemnity is provided for by the contract.

9.28(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon the person's judgment or claim is not prejudiced by,

(a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insurer after the happening of the event giving rise to a claim under the contract,
(b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract, or
(c) any contravention of the Criminal Code, chap. C-34 of the Revised Statutes of Canada, or a statute of any province or territory of Canada or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in paragraph (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

9.28(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies *mutatis mutandis* to the instrument.

9.28(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the contribution is rateably or by way of first loss or excess insurance, as the case may be, and the insured shall on demand furnish the insurer with particulars of all other insurance covering the subject matter of the contract.

9.28(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1), and the insurer admits liability to pay the insurance money under the contract and the insurer considers that,

(a) there are or may be other claimants, or
(b) there is no person capable of giving and authorized to give valid discharge for payment who is willing to do so,

the insurer may apply to the court ex parte for an order for payment of the money into court, and the court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

9.28(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

9.28(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 9.20, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 9.21.

9.28(10) Where one or more contracts provide for coverage of a type mentioned in section 9.18 or 9.19, the insurer may,

(a) with respect to that type of coverage, and
(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

9.28(11) Where one or more contracts provide for coverage in excess of the limits mentioned in section 9.21, the insurer may,

(a) with respect to the coverage in excess of those limits, and
(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

9.28(12) Where a contract provides coverage for loss or damage resulting from bodily injury to , or the death of , any person being carried in or upon, or entering, or getting onto, or alighting from, an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, then

(a) with respect to that type of coverage; and
(b) as against a claimant,

the insurer may only avail itself of a defence that it is entitled to set up against the insured with respect to that part of the coverage, if any, that exceeds

(c) the limits mentioned in section 9.21; or
(d) the minimum limits required for that type of coverage by or pursuant to another Act,

whichever is greater

9.28(13) The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

9.28(14) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

9.28(15) Upon being made a third party, the insurer may,
(a) contest the liability of the insured to any party claiming against the insured,
(b) contest the amount of any claim made against the insured,
(c) deliver any pleadings in respect of the claim of any party claiming against the insured,
(d) have production and discovery from any party adverse in interest, and
(e) examine and cross-examine witnesses at the trial,
to the same extent as if it were a defendant in the action.

9.28(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

9.29(1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action.

9.29(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor.

ACCIDENT BENEFITS

9.30(1) Where in a contract an insurer provides insurance against expenses for medical, surgical, dental, chiropractic, ambulance, hospital, professional nursing or funeral services, the insurance applies only in respect of reasonable expenses,
(a) of or incurred for any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in paragraph (a) of the definition of "automobile insurance" in section 1 is provided under the contract, and

(b) of the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

9.30(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of the *Fatal Accidents Act* may have against the insurer and any other person who may be liable to the insured person or their personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or their personal representatives or any other person.

9.30(3) The insurance mentioned in paragraph (1)(a) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

9.30(4) The insurance mentioned in paragraph (1)(a) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

9.30(5) The insurance mentioned in paragraph (1)(b) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

9.31(1) Where in a contract an insurer provides accident insurance benefits in respect of the death of or injury to an insured person arising out of an accident involving an automobile, the insurance applies only in respect of,

(a) any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in paragraph (a) of the definition of "automobile insurance" in section 1 is provided under the contract, and

(b) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the policy for the purposes of the insurance.

9.31(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of such payment, a release by the insured person or the insured person's personal representatives of any claim that the insured person or the personal representatives or any person claiming through or under the same or by virtue of the *Fatal Accidents Act* may have against the insurer and any other person who may be liable to the insured person or their personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or the personal representatives or any other person.

9.31(3) Subject to subsection (5), the insurance mentioned in paragraph (1)(a) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

9.31(4) Subject to subsection (5), the insurance mentioned in paragraph (1)(b) is excess insurance over any other automobile insurance of the same type available to the injured person or in respect of a deceased person.

9.31(5) Where a person is entitled to benefits under more than one contract providing insurance of the type mentioned in this section, the person or their personal representative or any person claiming through or under him or by virtue of the *Fatal Accidents Act* may recover only an amount equal to,

(a) one benefit, if the benefits under the contracts are of the same limit, or
(b) the highest benefit, if the benefits under the contracts are not of the same limit.

9.32(1) Where a person is injured or killed in an accident in the Province involving an automobile, that person or the person's personal representative may serve,

(a) a demand by registered mail on the owner of the automobile, or
(b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type mentioned in section 9.30 or 9.31 or either of them, and, where the demand is made under paragraph (a), requiring the owner, if the owner has such insurance, to state the name of the insurer.

9.32(2) An owner or insurer who does not, within ten days after receiving a demand made under subsection (1), comply with the demand is guilty of an offence.

9.33 Any person insured by but not named in a contract to which section 9.30 or 9.31 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

9.34(1) Where a person, entitled to benefits provided by insurance under section 9.30 and section 9.31 or either of them

(a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for payment of the benefits provided by the insurance, or

(b) is a pedestrian and is struck by a motor vehicle, the insurer of the owner of that motor vehicle shall, in the first instance, be liable for the payment of the benefits provided by the insurance.

9.34(2) Nothing in this section affects the operation of the provisions of subsections (2) to (5) inclusive of sections 9.30 and 9.31.

9.35(1) Where an insurer admits liability for insurance money payable under section 9.30, 9.31, 9.43 and it appears that,

(a) there are adverse claimants,

(b) the whereabouts of an insured person entitled is unknown, or

(c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after thirty days after the date upon which the insurance money becomes payable, apply to a judge of the court *ex parte* for an order for payment of the money into the Court of , and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

9.35(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into the Court, and the insurance money shall be dealt with as the judge of the court orders.

9.36 Every action or proceeding against an insurer under a contract in respect of insurance provided under section 9.30, 9.31 or 9.43 shall be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than one year after the happening of the accident.

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9.37(1) Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by an automobile, such person shall furnish the person against whom the claim is made full particulars of all insurance available to the claimant under contracts falling within the scope of section 9.30 or 9.31.

9.37(2) Where a claimant is entitled to the benefit of insurance referred to in section 9.30 or 9.31 this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or the insurer of the person liable to the claimant.

9.37(3) This section applies only with respect to accidents occurring after the coming into force of the section.

9.38 [31] Every contract evidenced by a motor vehicle liability policy provides

(a) insurance described in section 9.30 against expenses for medical, surgical, dental, chiropractic, ambulance, hospital, professional nursing or funeral services, and

(b) accident insurance benefits described in section 9.31 in respect of death of or injury to an insured person,

as set forth in *the Standard Automobile Policy* approved by the Superintendent under section 9.4.

OTHER INSURANCE

9.39(1) Subject to section 9.25, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in the definition "owner's policy" in section 1 is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

9.39(2) Subject to sections 9.25, 9.30, 9.31 and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of the named insured's interest in the subject-matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

9.39(3) "Rateable proportion" as used in subsection (2) means,

(a) if there are two insurers liable and each has the same policy limits, each of the insurers is liable to share equally in any liability, expense, loss or damage;

(b) if there are two insurers liable with different policy limits, the insurers are liable to share equally up to the limit of the smaller policy limit;

(c) if there are more than two insurers liable, paragraphs (a) and (b) apply mutatis mutandis.

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[31] Whether accident benefits are mandatory will be subject to jurisdictional variance.

PHYSICAL DAMAGE COVER

9.40 Subject to subsection 9.4(1), the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary.

9.41(1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only,

(a) an agreed portion of any loss that may be sustained, or
(b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

9.41(2) Where a clause is inserted in accordance with subsection (1), there shall be printed or stamped upon the face of the policy in conspicuous type the words: "This policy contains a partial payment of loss clause".

9.42(1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

9.42(2) Where notice is given or proof of loss is made by a person other than the insured, because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under statutory conditions 4 and 7, the insurer may, notwithstanding subsection (1) but in any event not earlier than sixty days from delivery of the proof required under clause (c) of subcondition (1) of said statutory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract.

UNIDENTIFIED AND UNINSURED ACCIDENT COVERAGE

9.43(1) In this Sub-Part

"insured automobile" means the automobile as defined or described under the contract;

"person insured under the contract" means,

(a) in respect of a claim for damage to the insured automobile, the owner of the automobile,
(b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,
(c) in respect of a claim for bodily injuries or death,

(I) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,

(ii) the insured named in the contract and, if residing in the same dwelling premises as the insured named in the contract, his or her spouse and any dependent relative,

  (A) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

  (B) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

(iii) if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, if residing in the same dwelling place, his or her spouse and any dependent relative,

  (A) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or

  (B) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,

if such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

“**unidentified automobile**” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

“**uninsured automobile**” means an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

9.43(2) Every contract evidenced by a motor vehicle liability policy shall provide for payment by the insurer of all sums that

(a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile,

(b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile, and

(c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile,

subject to the terms, conditions, provisions, exclusions and limits prescribed by Regulation.

9.43(3) A dependent relative referred to in the definition "person insured under the contract" in subsection (1)

(a) who is the owner of an automobile insured under a contract, or
(b) who sustains bodily injuries or dies as the result of an accident while driving, being carried in or upon or entering or getting on to or alighting from his or her own uninsured automobile,

shall be deemed not to be a dependent relative for the purposes of this section.

9.43(4) The Minister may make Regulations

(a) prescribing, amending or altering the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (2);
(b) deeming any term, condition, provision, exclusion, or limit as prescribed, amended or altered by a Regulation made under paragraph (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the Regulation and in any motor vehicle liability policy that is subsisting on the effective date of the Regulation;
(c) requiring that terms, conditions, provisions, exclusions and limits as prescribed, amended or altered by a Regulation made under paragraph (a) be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

9.43(5) Any payments made or available to a person under a contract of insurance referred to in subsection (2) constitute, to the extent of such payments, a release by the person or the person's personal representative or any person claiming through or under the person or by virtue of the *Fatal Accidents Act*, of any claim that the person may have under subsection (2), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or the person's personal representative or any other person.

9.43(6) A release within the meaning of subsection (5) shall not enure to the benefit of the person or persons against whom the insurer has a right to subrogation under this Act.

9.43(7) This section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after the commencement of this subsection, and all contracts evidenced by motor vehicle liability policies that were subsisting on the commencement of this subsection shall be deemed to provide for the payments referred to in subsection (2) in respect of an accident arising out of the use or operation of an automobile occurring on or after the commencement of this subsection.

9.44(1) Sections 9.45 to 9.64 apply only to matters arising out of accidents involving an automobile occurring on or after the commencement of this subsection.

9.44(2) Sections 9.45 to 9.64 apply only to a claim for damages by a person who is not insured under a contract within the meaning of section 9.43 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, and, subject to subsection (4), no person other than one who is not insured under a contract within the meaning of section 9.43 and who has no other insurance, or who has other insurance that is inadequate, with respect to the damages claimed, shall apply to the Facility Association for payment of damages in accordance with sections 9.45 to 9.64.

9.44(3) Notwithstanding any other provision of this Act, no person shall apply to the Facility Association under section 9.45 or 9.46 for payment of damages in respect of damage to an automobile owned by or registered in the name of the person, notwithstanding that the person may have had no applicable and collectible insurance with respect of that automobile at the time of the accident in which the damage was incurred, if, at the time of the accident, the person was driving the automobile or had the care or control of it, whether it was in motion or not.

9.44(4) Where a question arises between a person's insurer and the Facility Association as to whether a person is insured under a contract of insurance within the meaning of section 9.43 or has other insurance with respect to the damages claimed, the person may, at the person's option, make a claim for damages against the insurer or apply to the Facility Association for payment of damages in accordance with sections 9.45 to 9.64 .

9.44(5) Where, in the circumstances described in subsection (4), a person elects to make a claim for damages against the person's insurer and liability is denied on the grounds that the person is not insured under a contract within the meaning of section 9.43 and has no other insurance with respect to the damages claimed, the person may proceed, in accordance with sections 9.45 to 9.64, to apply to the Facility Association for payment of damages.

9.44(6) Where, in the circumstances described in subsection (4) or (5), a person elects to proceed, in accordance with sections 9.45 to 9.64, to apply to the Facility Association for payment of damages and the Facility Association makes a payment to the person in accordance with those sections, the Facility Association is subrogated to the extent of those payments to the rights of the person to whom the amount is paid and, where in the opinion of the Facility Association, the person is insured under a contract within the meaning of section 9.43 or has other insurance with respect to the damages claimed, the

Facility Association may bring an action in its name or in the name of such person against the insurer to recover the amount of the payment.

9.44(7) No payment made by the Facility Association in the circumstances described in subsection (6) bars the person to whom it is made from making a claim against the person's insurer for damages in excess of the amount of the payment by the Facility Association.

9.45(1) A person who would have a cause of action against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care and control of the person, for damages for injuries to or the death of any person or damage to property, arising out of the ownership, use or operation of the automobile in the Province, except a person entitled to make application under section 9.43, may make application on a form provided by the Facility Association for payment by the Facility Association of the damages in respect of such death, personal injury, or property damage.

9.45(2) Upon receipt of an application under subsection (1), the Facility Association shall, by registered or certified mail, forward a notice of the application for payment by the Facility Association to the owner and the driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, to their latest known addresses or to their latest addresses as recorded with the Registrar of Motor Vehicles.

9.45(3) The Facility Association may, in respect of an application made under subsection (1), make payment, subject to the same conditions, limits, deductions and exclusions which would apply to an application by a judgment creditor in accordance with sections 9.45 to 9.64, with the necessary modifications, of an amount that it considers proper in all the circumstances if

(a) the applicant executes a release under seal of all claims arising out of the automobile accident, subject to subsections 9.44(6) and 9.44(7), that occasioned the damages to be paid by the Facility Association, and

(b) subject to paragraph (c), the owner and driver of the automobile against whom liability for the damages occasioned by the operation of the automobile is alleged, execute a consent to the payment of the sum for damages by the Facility Association and also execute under seal an undertaking in a form provided by the Facility Association to repay to the Facility Association the amount to be paid by the Facility Association, or

(c) the person to whom a notice is sent in accordance with subsection (2) does not reply within thirty days of the date upon which the notice was sent either

(i) by mail, or

(ii)by attending in person at the place named in the notice,

and dispute liability to the person making application under subsection (1).

9.45(4) Where an amount is paid by the Facility Association under subsection (3) or (5), the Facility Association shall, to the extent of the amount paid be deemed to be a creditor of every person against whom liability for the damages occasioned by the operation of the automobile is alleged and who was given notice under subsection (2), and upon the filing with a clerk of the Court of a certificate of the Facility Association in a form prescribed by Regulation stating the amount paid, judgment may be entered in that amount in the name of the Facility Association as a judgment of the Court, and, without the consent of the Facility Association, no execution under a judgment obtained with respect to the damages referred to above shall be made by any person other than the Facility Association against the property of the judgment debtor until the judgment debt of the Facility Association is satisfied.

9.45(5) The Facility Association may in its discretion make interim payments to claimants claiming damages for personal injury where the responsible person or persons do not dispute their liability after a notice is sent to them in accordance with subsection (2).

9.46 Subject to section 9.51, where a person obtains in any court in the Province a judgment

(a) against an owner of an automobile or a driver of an automobile, other than an automobile owned by or under the care or control of the person, for damages for injuries to or the death of any person or damage to property, arising out of the ownership, use or operation of the automobile in the Province, or

(b) against a Party Unknown, as contemplated by section 9.54, for damages for injury to or the death of any person arising out of the ownership, use or operation of an automobile in the Province,

upon the determination of all proceedings, including appeals, the person may apply to the Facility Association for payment of the amounts in respect of the judgment to which the person is entitled in accordance with sections 9.45 to 9.64.

9.47 The Facility Association shall pay out to the person the amount of the judgment including the costs included in the judgment, or that part of the judgment including the costs to which the person is entitled, if

(a) the person makes an affidavit

(i) as to what amount the person has recovered or is or was entitled to recover, from any source, for or in respect of any injury, death or damage to a person or property arising out of the ownership, use or operation of the automobile by the owner or driver of it against whom the judgment was obtained whether or not, in the action damages were claimed for or in respect of the injury, death or damage and as to what compensation or services or benefits with a pecuniary value the person has recovered or received or is or was entitled to recover or receive for or in respect of the injury, death or damage,

(ii) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 9.44(4), no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and

(b) the solicitor for the person makes an affidavit

(i) that the judgment is a judgment as described in section 9.46,

(ii) giving particulars of the amount of damages for or in respect of injury or death, damage to property and the costs, included in the judgment,

(iii) that in so far as the solicitor was advised by any person and learned of any facts during the litigation

(A) the solicitor, subject to subsection 9.44(4), has commenced action against all persons against whom the person might reasonably be considered as having a cause of action for or in respect of the injury, death or damage to person or property as described in subparagraph (a)(i),

(B) the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance and that, subject to subsection 9.44(4), no part of the amount sought to be paid by the Facility Association is sought in lieu of making a claim or receiving a payment which is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and

(C) that except as disclosed in the applicant's affidavit, the person is and was not entitled to recover, from any source, nor to receive compensation or services or benefits with a pecuniary value, for or in respect of any injury, death or damage to person or property as described in subparagraph (a)(i),

(iv) that the action was defended throughout to judgment or that there was a default or a consent or agreement by or on behalf of the defendant and that the solicitor complied with section 9.51, and

(c) the affidavits together with

(I) a copy of the statement of claim,

(ii) a certified copy of the judgment,

(iii) the assignment of judgment, and

(iv) where applicable, the solicitor's taxed bill of costs,

are received by the Facility Association.

9.48(1) Where, on an application to the Facility Association,

(a) all the documents required under section 9.47 are not received by the Facility Association,

(b) any matter required to be in an affidavit is omitted,

(c) the amount requested to be paid by the Facility Association is, in its opinion, greater than the amount to which the applicant is entitled under sections 9.45 to 9.64, or

(d) for any reason, the Facility Association wishes the application for payment to go before a judge of the Court for an order for payment by the Facility Association,

the Facility Association shall, within a reasonable period of time, advise the person of its objections to the application for payment and, subject to subsection (2), advise the person that the person must obtain an order of the Court for payment by the Facility Association.

9.48(2) The Facility Association shall advise the person to remedy any objection it may have against payment and if the objection is remedied to the satisfaction of the Facility Association, it shall then make payment as hereinbefore provided.

9.49 When a person is advised that payment shall not be made except by order of a judge of the Court, the person may apply to the Court by way of Notice of Application, upon notice to the Facility Association, for an order directing payment by the Facility Association of the amount in respect of the judgment to which the person is entitled under sections 9.45 to 9.64.

9.50(1) The Court may make an order directed to the Facility Association requiring it, subject to sections 9.45 to 9.64, to pay the amount in respect of the judgment to which the judgment creditor is entitled in accordance with those sections, if the applicant, in and by the application, satisfies the Judge

(a) that the applicant has obtained a judgment as described in section 9.46, stating whether against an owner, a driver or a Party Unknown, the amount of the judgment, and the amount owing on the judgment at the date of the application,

(b) that, subject to subsection 9.44(4), the applicant has commenced action against all persons against whom the applicant might reasonably be considered as having a cause of action for or in respect of any injury, death or damage to person or property arising out of the ownership, use or operation of the automobile by the owner or driver against whom the judgment was obtained,

(c) that the applicant has prosecuted every action in good faith to judgment or dismissal,

(d) that, with respect to the amount to be paid, the applicant has not recovered and is and was not entitled to recover, from any source, any amount for or in respect of the injury, death or damage to person or property described in paragraph (b),

(e) that, with respect to the amount to be paid, the applicant has not received and is and was not entitled to receive from any source any compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage to person or property described in paragraph (b),

(f) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and that, subject to subsection 9.44(4), no part of the amount sought to be paid out by the Facility Association is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance and that no part of the amount sought will be paid to an insurer to reimburse or otherwise indemnify an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a contract of insurance, and,

(g) that the amount sought to be paid out by the Facility Association does not exceed the maximum amount payable under section 9.60.

9.50(2) The Facility Association may appear and be heard on any application made pursuant to subsection 1 and may show cause why the order should not be made.

9.51(1) Where an action is commenced and the defendant

(a) fails to file and serve a statement of defence,

(b) fails to appear in person or by counsel at an examination for discovery, trial or appeal or notifies the plaintiff that such failure is likely, or

(c) consents or agrees to the entering of judgment,

no order may be made under section 9.50, and no money is required to be paid by the Facility Association in respect of a judgment obtained on such proceedings, unless, before taking any further step in the proceedings, the plaintiff gives written notice, in the form prescribed by Regulation, to the Facility Association of such failure, notification, consent or agreement and affords it reasonable time to investigate the circumstances of the claim and an opportunity to take such action as it considers advisable under subsection (2).

9.51(2) Where the Facility Association receives notice under subsection (1), it may, if it considers it advisable, on behalf and in the name of the defendant, take any step to enforce the defendant's right to compensation or indemnity in respect of or arising out of the claim that is available to the defendant, and take any step in the proceedings, including a consent to judgment in such amount as it may consider proper in the circumstances and all acts done in accordance with this subsection shall be deemed to be the acts of the defendant.

9.52(1) No money is required to be paid by the Facility Association in compliance with an order made under section 9.50 until the judgment of the applicant or the portion of the judgment for which the Facility Association is liable or the applicant's interest in the judgment is assigned to the Facility Association.

9.52(2) Upon filing a copy of the assignment of judgment, certified by the Facility Association to be a true copy, with the Registrar, or clerk, as the case may be, of the court in which the judgment was obtained, the Facility Association shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

9.52(3) Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment, certified in accordance with subsection (2), is filed with the sheriff having the order of seizure and sale, subsection (2) shall apply with the necessary modifications.

9.53 Where injury to or the death of any person arises out of the ownership, use or operation of an automobile in the Province but the identity of the automobile, the owner and the driver of it cannot be established, any person who would have a cause of action against the owner or driver in respect of such injury or death may, upon notice to the Facility Association, apply to the Court for an order permitting the person to bring an action in the Court against a nominal defendant to be designated as a Party Unknown.

9.54 The Court may make an order permitting the applicant to bring an action against a Party Unknown if satisfied

(a) that there are reasonable grounds for bringing the action,

(b) that all reasonable efforts have been made to ascertain the identity of the automobile involved and of the owner and driver of it,

(c) that the identity of the automobile involved and of the owner and driver of it cannot be established, and

(d) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by reason of the existence of a contract of insurance, and that, subject to subsection 9.44(4), no part of the amount sought to be recovered in the intended action is sought in lieu of making a claim or receiving a payment that is or was payable by reason of the existence of a contract of insurance, and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by it by reason of the existence of a contract of insurance.

9.55(1) In any action brought against a Party Unknown under sections 9.53 and 9.54, the Facility Association has all the rights of a defendant in the action, but nothing in this section imposes any liability on the Facility Association.

9.55(2) In any action to which subsection 1 applies, the Facility Association may plead the general issue and give the special matter in evidence.

9.56(1) Where an action for damages for injury to or the death of any person, arising out of the ownership, use or operation of an automobile in the Province has been dismissed and the Court in dismissing the action states in writing that the injury or death arose out of the ownership, use or operation of an automobile

(a) the identity of which and of the owner and driver of which is not established, or

(b) at a time when such automobile was, without the consent of the owner, in the possession of some person other than the owner and the identity of the driver is not established,

sections 9.53 and 9.54 shall be available for a period of three months from the date of such dismissal, notwithstanding any Act limiting the time within which an action may be brought.

9.56(2) Where, in accordance with subsection (1), an application is made under section 9.53, paragraph 9.54(c) does not apply.

9.57(1) Where an action for damages for injury to or the death of any person arising out of the ownership, use or operation of an automobile in the Province is commenced and the defendant by the pleadings alleges that the plaintiff's damage was caused by a Party Unknown, the plaintiff may make application to add the Party Unknown as a defendant and section 9.54 shall apply with the necessary modifications.

9.57(2) This section does not limit or restrict any right to add or join any person as a party to an action in accordance with the practice of the court in which the action is pending.

9.58(1) Where judgment has been obtained against a Party Unknown, the Facility Association may at any time bring action against any person for a declaratory judgment, declaring that person to have been, at the time of the accident, the owner or driver of the automobile in respect of the ownership, use or operation of which the judgment was obtained, and the court may give judgment accordingly.

9.58(2) Such action may be brought in the Court of the Province.

9.58(3) Notwithstanding *any other Act* when a declaratory judgment has been rendered under this section

(a) the person declared in the judgment to be the owner or driver shall be deemed to have been the defendant in the action in which judgment was obtained against the Party Unknown and the judgment against the Party Unknown shall be deemed to be a judgment against such person, and

(b) the Facility Association shall be deemed to have obtained a judgment against such person for the amount of all moneys paid by it in respect of the judgment against the Party Unknown and shall accordingly have all the rights of a judgment creditor, including the right to recover any money that would have been payable in respect of the death or injury under any contract of insurance that was in force at the time of the accident, notwithstanding any Act limiting the time within which an action may be brought. .

9.58(4) Where the injury or death arose out of the ownership, use or operation of the automobile at a time when the automobile was, without the owner's consent, in the possession of some person other than the owner, such action shall be disposed of in the same manner as though the identity of the owner had not been established.

9.59 In an action against a Party Unknown, a judgment against a Party Unknown shall not be granted unless the Court in which the action is brought is satisfied that all reasonable efforts have been made by the claiming party to ascertain the identity of the automobile and the owner and driver of it and that such identity cannot be established.

9.60(1) The Facility Association is not required to pay

(a) any amount in respect of a judgment in favor of a person who ordinarily resides outside of the Province, unless such person resides in a jurisdiction that provides substantially the same benefits to persons who ordinarily reside in the Province, but no payment shall include an amount that would not be payable by the law of the jurisdiction in which such person resides,

(b) more than two hundred thousand dollars, exclusive of costs for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after the commencement of this paragraph. but, subject to subsection (2) and the Regulations, where the judgment creditor recovers or is or was entitled to recover, from any source, for or in respect of any injury, death or damage to person or property arising out of the ownership, use or operation of the automobile by the owner or driver against whom the judgment was obtained whether or not in the action damages were claimed for or in respect of the injury, death or damage or where the judgment creditor receives or is or was entitled to receive, from any source, compensation or services or benefits with a pecuniary value for or in respect of the injury, death or damage, the amount so recovered or received and the amount that the judgment creditor is or was entitled to recover or receive and the amount of compensation and pecuniary value of any services or benefits received or that the judgment creditor is or was entitled to receive, shall be deducted from the amount of damages included in the judgement and only the amount of damages included in the judgement after those deductions, or the maximum amount payable under paragraph (b), whichever is less, required to be paid by the Facility Association.

9.60(2) In computing the amount payable by the Facility Association, no reduction shall be made

(a) with respect to any amount recovered or recoverable by the judgment creditor under a contract of life insurance, where the amount is payable in respect of the death of the person,

(b) with respect to any compensation or the pecuniary value of any services or benefits which the judgment creditor received, or is or was entitled to receive, under the [Social Welfare Act, the Medical Services Payment Act or the Hospital Services Act],

(c) with respect to

  (I) any amount recovered by the judgment creditor, or which the judgment creditor is entitled to recover, from such sources as may be prescribed by Regulation, or

  (ii) any amount of compensation, or the pecuniary value of any benefits or services, received by the judgment creditor, or which the judgment creditor is entitled to receive, from such sources as may be prescribed by Regulation or where the compensation, benefits or services are of a kind prescribed by Regulation.

9.60(3) In this section "residence" shall be determined as of the date of the accident as a result of which the damages are claimed.

9.61(1) Subject to section 9.45, no costs, other than costs taxed on a party and party basis, are required to be paid by the Facility Association.

9.641(2) Where an action has been maintained in part by an insurer and a part only of the amount of the judgment in the action is payable by the Facility Association, there shall not be paid by the Facility Association more than that part of the party and party costs of the action that bears the same ratio to the whole of such costs as the part of the judgment payable by the Facility Association bears to the total amount of the judgment.

9.62 The practice and procedure of the Court or the court in which the application or action is brought, including the right of appeal and the practice and procedure relating to appeals apply to any application or action under sections 9.45 to 9.64.

9.63 No application for the payment of damages shall be made to the Facility Association by or on behalf of the Governments of Canada, the United States of America, a province, a state, or any political subdivision or corporation or agency of such Governments.

9.64 For the purposes of sections 9.45 to 9.64 all owners and drivers whose liability results in payment by the Facility Association shall be deemed to be *sui juris* and all actions taken by the Facility Association in the settlement of claims and actions on their behalf shall be deemed to be taken upon their instructions and with their full consent.

9.65 The Minister may make Regulations

(a) generally respecting forms to be used for the purposes of sections 9.45 to 9.64 and prescribing forms required to be prescribed;

(b) prescribing sources for the purposes of subparagraph 9.60(2)(c)(i)

(c) prescribing, for the purposes of subparagraph 9.60(2)(c)(ii), sources of compensation, benefits and services, and kinds of compensation, benefits, and services.

9.66 [32] Part [xx] of the *Insurance Act* as it was in force immediately before the first day of January, 19xx continues to apply to contracts of automobile insurance made before the first day of January, 19xx, until the contract expires or is canceled or renewed.

SUBROGATION

9.67(1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

9.67(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

9.67(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 9.41 applies, the insurer shall have control of the action.

9.67(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to,

(a) the solicitors to be instructed to bring the action in the name of the insured,
(b) the conduct and carriage of the action or any matters pertaining thereto,
(c) any offer of settlement or the apportionment thereof, whether action has been commenced or not,
(d) the acceptance of any money paid into court or the apportionment thereof,
(e) the apportionment of costs, or
(f) the launching or prosecution of an appeal,

either party may apply to a judge of the Court for the determination of the matters in question, and the Court shall make such order as the Court considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

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[32] Legislative drafters will decide whether this clause is necessary for transition purposes

9.67(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

9.67(6) A settlement or release given before or after an action is brought does not bar the right of the insured or the insurer, as the case may be, unless they have concurred therein.

Sub-Part B: FACILITY ASSOCIATION

FACILITY ASSOCIATION

Definition
9.68 In this Act,[33]
"Facility Association" means the Facility Association established as an unincorporated non-profit association of insurers under The Compulsory Automobile Insurance Act, chapter 87 of the Statutes of Ontario, 1979, and continued under the Compulsory Automobile Insurance Act, of the Revised Statutes of Ontario, and includes any successor to it;

9.69(1) Every insurer licensed under this Act for automobile insurance is a member of the Facility Association and shall be bound by the articles of association and by-laws of the Facility Association.

9.69(2) The Facility Association shall, in its articles of association or by-laws and in terms not inconsistent with this Act, establish a plan to be known as the Plan of Operation

(a) to provide automobile insurance to owners and licensed operators of automobiles who, but for the Plan of Operation, would be unable to obtain such insurance, and

(b) to provide, in accordance with sections 9.45 to 9.64, payment with respect to claims for damages made by persons who are not insured under a contract within the meaning of section 9.43 and to have no other insurance, or who have other insurance that is inadequate, with respect to the damages claimed,

and shall, in accordance with those articles of association or by-laws and this Act, establish and implement the Plan of Operation and carry out its obligations in the Province with respect to that Plan.

9.70 The Facility Association shall,

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[33] Legislative drafters to review Newfoundland legislation for appropriate definition of FA which will clarify a not for profit status with no profit distribution to members. Each province will have to decide whether reference to the Ontario act is required. The issue is not substantive to harmonization or the operation of the model Act.

(a) in accordance with that aspect of the Plan of Operation referred to in paragraph 9.69(2)(a), ensure that automobile insurance is provided with respect to every application for automobile insurance submitted under the Plan of Operation to an insurer by an agent, broker or representative on behalf of any person, and

(b) in accordance with that aspect of the Plan of Operation referred to in paragraph 9.69(2)(b), carry out, in accordance with sections 9.48 to 9.67, its obligations with respect to applications made to it for payment of damages under those sections.

9.71 The Facility Association may, in accordance with its Plan of Operation, impose assessments on each member for the purpose of meeting the operating costs of the Facility Association and the Plan of Operation and each member shall, in accordance with the Plan of Operation, pay to the Facility Association any assessments so imposed.

9.72(1) The Facility Association shall file with the Rate Board the rates that it proposes to charge for automobile insurance placed through the Facility Association.

9.72(2) The Rate Board shall, by order, approve, prohibit or vary the rates filed under subsection (1).

9.72(3) Where the Facility Association wishes to make a change in the rates approved under this section it shall make an application to the Rate Board for approval of the change in the rates and the Rate Board, subject to this Act, shall, by order, approve, prohibit or vary that change.

9.72(4) The Rate Board may at any time require the Facility Association to provide information relating to rates filed under subsection (1) or to an application for approval of a change in rates under subsection (3).

9.72(5) The Rate Board may at any time investigate the rates charged for automobile insurance placed through the Facility Association, and notwithstanding approval of those rates, may order the Facility Association to make any change or changes the Rate Board considers proper.

9.72(6) The Facility Association shall not, and the members of the Facility Association shall not, charge any rates for automobile insurance placed through the Facility Association that have not been approved by the Rate Board in accordance with this section.

9.72(7) A violation of subsection (6) by the Facility Association or any of its members constitutes an offence to which section 9.97 applies, with the necessary modifications.

9.72(8) Sections 9.98 to 9.104 and the Regulations made under section 9.104 apply, with the necessary modifications, to the Facility Association and to any filing under this section.

9.72(9) The rates being charged by the Facility Association on the commencement of this subsection for automobile insurance placed through the Facility Association shall be deemed, on the commencement of this subsection, to have been filed with, and approved by, the Rate Board in accordance with this section, after which subsections (1) to (8) shall apply with respect to such rates or to any change in such rates.

9.73 The members of the board of directors and the officers and employees of the Facility Association shall furnish to the Superintendent each year such information and financial statements with respect to the Facility Association and the Plan of Operation referred to in subsection 9.69 as the Superintendent may from time to time require.

9.74 The Facility Association may, in its name,

(a) be prosecuted for an offence, and

(b) sue and be sued.

9.75 The articles of association and by-laws of the Facility Association shall be filed with the Superintendent on the commencement of this section and every by-law and every amendment, revision or consolidation of the articles of association or by-laws of the Facility Association made after the commencement of this section shall be filed with the Superintendent at least thirty days before the effective date of the by-law or the amendment, revision or consolidation of the articles of association or by-laws.

9.76 No by-law and no amendment, revision or consolidation of the articles of association or by-laws of the Facility Association made after the commencement of this section with respect to the Plan of Operation referred to in paragraphs 9.69(2)(a) and (b) shall come into effect in the Province unless it is approved by the Superintendent.

9.77(1) The Facility Association shall send written notice to the Superintendent of the names and residence addresses of the persons elected or appointed as officers and directors of the Facility Association immediately after their election or appointment, and their names and addresses may be made available to the public by the Superintendent.

9.77(2) The Facility Association shall, on the commencement of this subsection, appoint an agent for service in the Province and shall send written notice of the appointment to the Superintendent, which notice shall contain the name of the agent for service and the agent's address and the Superintendent shall file the notice.

9.77(3) If the individual appointed as agent for service dies or if the agent for service resigns or the appointment is revoked, the Facility Association shall immediately appoint another agent for service and send written notice of the appointment to the Superintendent, which notice shall contain the name of the other agent for service and the agent's address and the Superintendent shall file the notice.

9.77(4) The Facility Association shall immediately send written notice to the Superintendent of any change in the address of the agent for service and the Superintendent shall file the notice.

9.77(5) The address of an agent for service shown in the notice sent to the Superintendent under subsection (2), (3) or (4) shall be an office that is accessible to the public during normal business hours.

9.77(6) Service of any process, notice or document in any civil, criminal or administrative action or proceeding shall be deemed to have been sufficiently made upon the Facility Association if made upon the agent as shown in the most recent notice in the records of the Superintendent.

9.77(7) A notice or document may be sent or served upon the Facility Association by

(a) personally serving the agent for service as shown in the most recent notice in the records of the Superintendent,

(b) delivering the notice or document to the address of its agent for service, as shown in the most recent notice in the records of the Superintendent, or

(c) sending the document or notice by certified mail to that address.

9.77(8) A notice or document sent by certified mail in accordance with paragraph (7)(c) shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the notice or document was not received at that time or at all.

9.77(9) A copy of any notice or other document sent to or served on the Facility Association under this section shall be sent immediately to the Superintendent unless the Superintendent otherwise advises the Facility Association.

9.78(1) The Facility Association shall not cease to carry out any of its obligations in the Province with respect to the Plan of Operation referred to in paragraphs 9.69(2)(a) and (b) unless it gives to the Superintendent at least six months notice of its intention to do so.

9.78(2) A notice given under subsection (1) does not, within the time specified in the notice, relieve the Facility Association of any of its obligations in the Province with respect to the Plan of Operation referred to in paragraphs 9.69(2)(a) and (b) and the Facility Association shall be liable to continue, after the expiry of the time specified in the notice, to carry out any of its obligations with respect to any matter that arose but was not concluded before the expiry of the time specified in the notice.

9.78(3) Any obligations of the Facility Association under this Act that are not carried out by the Facility Association in accordance with this Act and any liability of the Facility Association arising out of those obligations shall be deemed to have been assumed by the insurers licensed under this Act for automobile insurance and the insurers shall be jointly and severally liable for any damages arising out of those obligations in respect of which the Facility Association is, or would be, liable under this Act.

9.78(4) Notwithstanding any other provision of this Act, if the Facility Association, as continued under the *Compulsory Automobile Insurance Act*, chapter 83 of the Revised Statutes of Ontario, 1980, is dissolved or discontinued or for any other reason ceases to exist in Ontario, it shall be deemed to have been continued in the Province, as it existed immediately before it was discontinued or dissolved or for any other reason it ceased to exist in Ontario, for the purposes of carrying out its obligations in the Province with respect to the Plan of Operation referred to in paragraphs 9.69(2)(a) and (b).

9.78(5) Where the Facility Association is deemed to have been continued in the Province under subsection (4), it shall, for the purposes of carrying out its obligations in the Province with respect to the Plan of Operation referred to in paragraphs 9.69(2)(a) and (b),

(a) consist of all insurers licensed under this Act for automobile insurance, together with those officers and directors who held office with the Facility Association immediately before it was so continued,

(b) operate in the Province under the articles of association and by-laws in effect immediately before the Association was so continued,

(c) have all the rights, powers, liabilities and obligations that were vested in it under the Compulsory Automobile Insurance Act, chapter 83 of the Revised Statutes of Ontario, 1980, and the articles of association and by-laws in effect immediately before it was so continued, and

(d) be deemed to be a successor to the Facility Association for the purposes of the definition "Facility Association".

Sub-Part C: GENERAL

PROVINCIAL MEDICAL CARE LEVY[34]

9.79(1) In this section and Part,

provincial authority" means the [35]*[Minister of Health]*.

9.79(2) The provincial authority may, in respect of personal injuries arising out of the use or operation of a motor vehicle registered in the Province, impose a levy on each insurer for the purpose of recovering

(a) the cost of the entitled services provided to beneficiaries under the Medical Services Payment Act,

(b) the cost of the entitled services provided to persons under the Hospital Services Act, and

(c) the cost of social services provided to persons under the Family Services Act.

9.80(1) The provincial authority shall, within sixty days after the commencement of this section,

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[34] These provisions are being reviewed with departments of Health or other authorities involved in the Medical Care Levy to ensure they are appropriate.

[35] Drafters will insert the appropriate authority in each province

(a) establish an estimate of the amount of the levy applicable for the current calendar year, and

(b) inform the Superintendent of the amount of the estimated levy.

9.80(2) The Superintendent shall within ninety days after the commencement of this section give notice to the insurer of the amount of the estimated levy the insurer is obliged to pay.

9.80(3) Each insurer shall, upon receipt of the notice given under subsection (2), remit payment to the Superintendent in the manner and at the times set by the Superintendent.

9.81(1) The provincial authority shall, prior to October 1 of each subsequent year,

(a) establish an estimate of the amount of the levy applicable on January 1 of the next calendar year, and

(b) inform the Superintendent of the amount of the estimated levy.

9.81(2) The Superintendent shall prior to January 15 of each year give notice to the insurer of the amount of the estimated levy the insurer is obliged to pay.

9.81(3) Each insurer shall upon receipt of the notice given under subsection (2) remit to the Superintendent equal quarterly payments as follows:

(a) the first payment shall be made before March 15 of the year in respect of which the estimate is made;

(b) the second payment shall be made before June 30 of the year in respect of which the estimate is made;

(c) the third payment shall be made before September 30 of the year in respect of which the estimate is made;

(d) the fourth payment shall be made before December 31 of the year in respect of which the estimate is made.

9.82(1) The provincial authority shall annually re-evaluate the accuracy of the levy estimate in the following year and shall make adjustments where necessary.

9.82(2) The provincial authority shall advise the Superintendent of any adjustment made under subsection (1) to the estimated levy.

9.82(3) The Superintendent shall give notice to the insurer of any adjustment made under subsection (1) to the estimated levy.

9.82(4) Where the adjusted amount is greater than the estimated levy, the insurer shall when making the next quarterly payment under subsection 9.72(3) remit payment of the adjusted amount to the Superintendent.

9.82(5) Where the adjusted amount is less than the estimated levy, the insurer shall credit the surplus amount to the next quarterly payment.

9.82(6) No interest is payable on the surplus or deficit resulting from the re-evaluation by the provincial authority under subsection (1).

9.83(1) Where an insurer fails to remit the levy within the time set for remittance under this Act the Superintendent may, after providing the defaulting insurer the opportunity to be heard, suspend the licence of the defaulting insurer respecting automobile insurance; and the suspension shall take effect on midnight of the last day for making the remittance.

9.83(2) Where a licence is suspended under subsection (1), the Superintendent may reinstate the licence of the defaulting insurer upon being satisfied that the insurer has remedied the default giving rise to the suspension.

9.83(3) The suspension of the licence of a defaulting insurer under subsection (1) shall not affect the validity of any policy of the insurer and all rights, duties, obligations and liabilities of the insured and insurer under any such policy shall remain in force and effect.

9.83(4) Where a defaulting insurer fails to remedy the default within ninety days, the Superintendent shall report this fact to the Minister and the Minister may upon giving notice to the defaulting insurer and after holding a hearing, revoke the licence of the insurer.

9.83(5) The Superintendent, without the consent of the policy holders or the defaulting insurer, may appoint an administrator for the automobile insurance contracts of a defaulting insurer whose licence is revoked under subsection (4) and such appointment shall remain in force until revoked by the Superintendent.

9.83(6) The remuneration of an administrator appointed under subsection (5) shall be in the absolute discretion of the Superintendent and all costs including remuneration associated with the appointment of the administrator and reinsurance of the automobile insurance contracts shall be borne by the defaulting insurer.

9.83(7) The administrator appointed under subsection (5) shall have a right of access to, and the defaulting insurer shall provide, all books and records relating to all automobile insurance contracts of the defaulting insurer in force at the time of suspension or revocation of the licence.

9.83(8) An administrator appointed under subsection (5) may arrange for the reinsurance by some other licensed insurer of all automobile insurance contracts of a defaulting insurer whose licence has been revoked under subsection (4).

9.83(9) Where the licence of a defaulting insurer is revoked under subsection (4), all automobile insurance contracts, the terms and conditions of such contracts and all rights, duties, obligations and liabilities of the insured and insurer thereunder remain in full force and effect until such contracts have been reinsured under subsection (8).

9.83(10) Notice of a suspension under subsection (1), reinstatement under subsection (2) or revocation under subsection (4) shall be published by the Superintendent once in the *Gazette* as soon as reasonably practicable after such suspension, reinstatement or revocation takes effect.

9.83(11) An administrator appointed under subsection (5) may make a valid and effectual assignment to the reinsurer of all right, title and interest of a defaulting insurer whose licence has been revoked, in and to the automobile insurance contracts of the defaulting insurer in force at the time of reinsurance.

9.83(12) Where an assignment of contracts to a reinsurer is made by an administrator under subsection (11), all right, title and interest in the unearned premiums existing in respect of such contracts shall, effective as of the time of reinsurance, vest in the reinsurer and the defaulting insurer shall immediately pay over to the reinsurer an amount equal to the amount of the unearned premiums then in existence.

9.83(13) Where right, title and interest in unearned premiums vests in the reinsurer under subsection (12), the interest so vested in the reinsurer shall constitute a debt owing by the defaulting insurer to the reinsurer and shall be a first charge against all assets of the defaulting insurer in the Province.

DAMAGES[36]

9.84 In sections 9.84 to 9.89

"accident" means an accident arising out of the use or operation of an automobile.

9.85(1) Where a person who is required by [37]*[section 200.1 of the Motor Vehicle Act]* to be wearing a seat belt assembly sustains bodily injury or dies in an accident while the person is not wearing a seat belt assembly, the amount recoverable by the person, or his or her personal representative, as damages for bodily injury or death in an action arising out of the accident shall be reduced by twenty-five per cent, unless the person or his or her personal representative, as the case may be, establishes that the failure to wear a seat belt assembly did not contribute to the bodily injury or death.

9.85(2) Where a person to whom subsection (1) applies contributed to his or her bodily injury or death by other acts or omissions in addition to the failure to wear a seat belt assembly, and the person or his or her personal representative does not establish that the failure to wear a seat belt assembly did not contribute to the bodily injury or death, the reduction in the amount of damages shall be determined with regard to all the circumstances but shall not be less than twenty-five per cent.

9.85(3) Subsection (1) does not apply to a person who sustains bodily injury or dies in an accident while the person is wearing a seat belt assembly but is not wearing it in a properly adjusted and securely fastened manner as required under [38]*[section 200 of the Motor Vehicle Act]*.

9.85(4) This section applies only to accidents occurring on or after the commencement of this section.

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[36] These provisions 9.89-9.94 currently appear only in the NB Act. Newfoundland is looking at many of these issues through the Select Committee report, NS and PEI may consider adopting. Inclusion of these provisions may impact the auto levy and accident benefits levels

[37] Legislative drafters will insert appropriate section reference for each province

[38] Drafters will insert the appropriate authority in each province

9.86(1) In an action for damages arising out of an accident, the amount recoverable by the plaintiff as damages for loss of income between the date of the accident and the date of the judgment shall be calculated on the basis of the income the plaintiff would have received during that period less any applicable income tax.

9.86(2) This section applies only to accidents occurring on or after the commencement of this section.

9.87(1) In an action for damages arising out of an accident, the amount recoverable by the plaintiff as damages for loss of income between the date of the accident and the date of the judgment shall, subject to subsection (4), be reduced by

(a) all payments that the plaintiff received for loss of income during that period under an enactment of any jurisdiction or under an income continuation benefit plan, and

(b) all payments that the plaintiff received during that period under a sick leave plan arising by reason of the plaintiff's occupation or employment.

9.87(2) Where payments referred to in subsection (1) are taxable as income, the amount of the reduction made under that subsection shall be the amount of the payments less the applicable income tax.

9.87(3) Despite any enactment or agreement or the terms of any plan but subject to subsection (4),

(a) a person who makes a payment referred to in subsection (1) is not subrogated to the right of recovery of the plaintiff against another person in respect of that payment, and

(b) a plaintiff who has received a payment referred to in subsection (1) and who subsequently receives an award of damages is not required to reimburse the person who made the payment.

9.87(4) Paragraph (1)(a) does not apply to payments made under an enactment that expressly permits the person who makes the payments to recover the amount of the payments from the plaintiff or the defendant.

9.87(5) This section applies only to accidents occurring on or after the commencement of this section.

9.88(1) Notwithstanding subsection *45(1) of the [Judicature Act]*, in an action for damages arising out of an accident, interest shall not be awarded, for any period between the date of the accident and the date of the judgment, in respect of any damages for the non-pecuniary loss of the plaintiff.

9.88(2) This section applies only to accidents occurring on or after the commencement of this section.

9.89(1) At any time after an action for damages arising out of an accident is commenced, the plaintiff may apply to a judge of the Court for an order requiring the defendant to make an advance payment of special damages.

9.89(2) The judge may make an order under subsection (1) on any terms the insured thinks appropriate, if the judge is satisfied that the plaintiff will prove that the defendant is liable for those damages.

9.89(3) The judge may order that payment under subsection (1) be made by lump sum, by instalment or by a combination of both.

9.89(4) In calculating the amount of an advance payment, the judge may take into account any circumstances the insured considers relevant including

(a) the amount of special damages already incurred or likely to be incurred before judgment by the plaintiff,

(b) the amount, if any, counterclaimed by the defendant,

(c) the extent, if any, to which the plaintiff may be found to be contributorily negligent,

(d) any failure by the plaintiff to mitigate the amount of special damages, and

(e) the needs and resources of the plaintiff and the means of the defendant.

9.89(5) This section applies only to accidents occurring on or after the commencement of this section.

Sub-Part D: RATES and CLASSIFICATIONS

RATE and CLASSIFICATION BOARD

Definition

9.90 In this Part

"Rate Board " means the *Board of Commissioners of Public Utilities* or such additional or other Board as designated by the Lieutenant Governor In Council;

"insurer" includes the Facility Association except where the Act expressly provides otherwise.

Statistical returns

9.91(1) In addition to any other filing requirements under this Act, every insurer that carries on the business of automobile insurance in the Province shall prepare and file with the Superintendent, or with such person or statistical agency as the Superintendent may designate,

(a) a record of its automobile claims, including information on identifiable individuals respecting specific automobile insurance claims;

(b) a record of its automobile insurance premiums, and of its loss and expense costs in the province, in such form and manner and according to such system of classification, as the Superintendent approves; and

(c) any other record, information or data that the Superintendent requests, in such form or manner as the Superintendent specifies.

Compilation expense

9.91(2) The Superintendent may require any person or agency so designated to compile the data so filed, and the expense of making such compilation shall be apportioned among, the insurers whose data are compiled by such agency, by the Superintendent, who shall certify in writing the amount due from each insurer and the amount shall be payable by the insurer to the agency forthwith.

Rate Board duties

9.92 The Rate Board has the general supervision of the rates an insurer charges or proposes to charge for automobile insurance.

Filing of rates

9.93(1) Every insurer shall file with the Rate Board the rates it proposes to charge for automobile insurance.

Information to be furnished

9.93(2) When an insurer files rates under subsection (1), it shall

(a) provide to the Rate Board any information required by the Rate Board, the Superintendent or the Regulations, and

(b) specify the date on which it proposes to begin to charge those rates.

Idem

9.93(3) The date specified under 9.93(2)(b) shall be no less than thirty days after the insurer files the rates in accordance with this Part.

Effective date

9.93(4) Except as otherwise provided in section 9.96, an insurer may charge the rates filed in accordance with this Part as of the date specified under paragraph (2)(b).

Prohibition re rates

9.94(1) On and after the commencement of this Part, no automobile insurer shall use or charge a rate for a coverage or category of automobile insurance that is not permitted to be used or charged in accordance with the provisions of this Act.

Exception

9.94(2) Subsection (1) does not prevent an insurer from continuing to use or charge the rates the insurer was using or charging on the commencement of this Part if those rates were approved or deemed to have been approved by the Rate Board in accordance with this Act as it read on or before [*date*].

Additional information

9.95 The Rate Board may at any time require an insurer to provide information relating to rates being used or filed under subsection 9.93(1).

Rate Board power to investigate and hold hearing

9.96(1) The Rate Board may of its own motion, and shall, when requested by the Minister examine into and investigate any or all insurers' rates for all or any classes of automobile insurance in or in any part of the Province, and the Rate Board may conduct a hearing as part of its investigation.

Notice to Superintendent

9.96(2) Where the Rate Board undertakes any examination or investigation or conducts a hearing, the Rate Board shall notify the Superintendent and the Rate Board shall consider any information provided to the Rate Board by the Superintendent and the Superintendent shall have standing at any hearing.

Prohibition re rates

9.96(3) Where, within thirty days after an insurer files rates in accordance with this Part, the Rate Board notifies the insurer that it intends to investigate the insurer's rates, the insurer shall not charge those rates unless the Rate Board notifies the insurer that the insurer may do so in whole or in part.

Discounting prohibited

9.96(4) An insurer, agent or broker shall not deviate from the schedule of rates filed by way of refund or otherwise of any part of the premium payable in respect of a policy of automobile insurance other than in accordance with the provisions of this Part, the Regulations or any other Act relating to insurance.

Effect of decision by Rate Board

9.96(5) Where, after an investigation, examination or hearing, the Rate Board determines that the rates charged or proposed to be charged by an insurer are excessive, inadequate, unfairly discriminatory or otherwise unreasonable the Rate Board may, by order, disallow all or any rate and require the insurer to make any change or changes the Rate Board deems proper and appropriate.

Reasons

9.96(6) Any order made by the Rate Board shall be public and shall state the reasons for the finding of the Rate Board.

Offence

9.97(1) An insurer who fails to comply with the provisions of this Part or the Regulations is guilty of an offence.

Licence suspension upon conviction

9.97(2) Where an insurer is convicted of an offence under this Part or the Regulations the Minister may suspend or cancel the licence of the insurer or impose such licence conditions or restrictions as the Minister deems appropriate.

Prior notice to Superintendent

9.98 The Rate Board immediately shall advise and forward to the Superintendent, a copy of all decisions or orders made under this Part prior to the Rate Board notifying the insurer.

Annual report by Rate Board

9.99 The Rate Board shall make and submit to the Minister within sixty days of the end of the fiscal year an annual report on the operation of the Rate Board under this Act for the preceding fiscal year.

Public Utilities Act applicable

9.100 The provisions of the *Public Utilities Act* apply *mutatis mutandis* to sections 9.93 to 9.99 unless inconsistent therewith.

Access to records

9.101(1) The Rate Board, or any person authorized in writing by the Rate Board, shall have access to all records, files, data or materials , howsoever maintained or stored, of an insurer or rating bureau as are related to the schedules or rates of the insurer or rating bureau and any insurer, officer or person in charge, possession, custody or control of the same who refuses to permit or to facilitate such access is guilty of an offence.

Rate Board support

9.101(2) The Rate Board has the power from time to time to engage the services of persons having special, technical or other knowledge for the purpose of assisting and advising the Rate Board .

Policy statements

9.102(1) The Minister may issue policy statements on matters related to automobile insurance rates.

When effective

9.102(2) A policy statement takes effect on the day it is published in the Gazette.

Effect of statement

9.102(3) The Rate Board shall have regard to the policy statements issued under this section in making decisions and setting rates and classifications under this Part.

Inquiry by Superintendent

9.103(1) The Superintendent may inquire into any matter regarding insurance rates fixed by a rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

Report

9.103(2) The Superintendent shall not make an order pursuant to an inquiry under this section, but the result of the inquiry shall be reported in the Superintendent's annual report.

REGULATIONS

Regulations[39]

9.104 The Minister may make Regulations

(a) prescribing a risk classification system or elements of a risk classification system that must be used by insurers or a class of insurers in classifying risks for a coverage or category of automobile insurance;
(b) prescribing elements of a risk classification system that insurers or a class of insurers are prohibited from using in classifying risks for a coverage or category of automobile insurance;
(c) prescribing the manner of gathering and filing of statistics and other information;

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[39] **Note to Legislative Drafters: need a provision for PUB to recover their operating expenses.**

(d) respecting criteria to be applied by the Rate Board in determining whether rates charged or proposed to be charged by an insurer are excessive, inadequate or discriminatory;

(e) respecting information to be provided by an insurer under paragraph 9.93(2)(a);

(f) concerning group rates and group marketing of automobile insurance;

(g) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;

(h) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;

(i) prescribing coverages and endorsements to be made available;

(j) governing the payment of premiums for automobile insurance in instalments and setting maximum rates of interest in relation to instalment payments;

(k) prescribing information to be provided and the time period within which the information must be provided;

(l) prescribing a short rate premium table for purposes of statutory condition 8(3);

(m) prescribing maximum monetary amounts and percentages by which the rate for a class of risks in respect of a coverage or category of automobile insurance may increase or decrease as a result of the application of a prescribed Regulation;

(n) for the better administration of this part;

SCHEDULE TO PART 9: STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

Material Change in Risk

1(1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within the insured's knowledge.

1(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

(a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the Bankruptcy Act (Canada);

and in respect of insurance against loss of or damage to the automobile,

(b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;

(c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Prohibited Use by Insured

2(1) The insured shall not drive or operate the automobile,

(a) unless the insured is for the time being either authorized by law or qualified to drive or operate the automobile; or

(b) while the insured is prohibited under order of any court from driving or operating an automobile; or

(c) while the insured is under the age of sixteen years or under such other age as is prescribed by the law of the province in which the insured resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him; or

(d) for any illicit or prohibited trade or transportation; or

(e) in any race or speed test.

Prohibited Use by Others

2(2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

(a) by any person,

  (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or

  (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which the insured resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or

(b) by any person who is a member of the household of the insured while that person is prohibited under order of any court from driving or operating an automobile; or

(c) for any illicit or prohibited trade or transportation; or

(d) in any race or speed test.

Requirements Where Loss or Damage to Persons or Property

3(1) The insured shall,

(a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;

(b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and whether or not the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and

(c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.

3(2) The insured shall not,

(a) voluntarily assume any liability or settle any claim except at the insured's own cost; or

(b) interfere in any negotiations for settlement or in any legal proceeding.

3(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to Automobile

4(1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

(a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;

(b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and

(c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of the insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

4(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

4(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

(a) without the written consent of the insurer; or

(b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

Examination of Insured

4(4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in the insured's possession or control that relate to the matters in question, and the insured shall permit extracts and copies thereof to be made.

Insurer Liable for Cash Value of Automobile

4(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to the actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

4(6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment; Salvage

4(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

In Case of Disagreement

4(8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the Insurance Act before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Inspection of Automobile

5 The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Insurance Money

6(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

When Action May Be Brought

6(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

Limitation of Actions

6(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within two years next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within two years next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim

7 Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8(1) This contract may be terminated,

(a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;

(b) by the insured at any time on request.

8(2) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

8(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium table prescribed in regulations for the expired time.

8(4) The refund may be made by money, postal or express company money order or cheque payable at par.

8(5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9 Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Part 10 - LIFE INSURANCE

Sub-Part A: GENERAL

DEFINITIONS

Definitions

10.1 In this Part,

"application" means an application for insurance or for the reinstatement of insurance;

"beneficiary" means a person, other than the insured or the insured's personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

"blanket insurance" means that class of group insurance that covers loss:

(1) arising from specified hazards incidental to or defined by reference to a particular activity or activities;

and

(2) which occurs during a limited or specified period;

"child" includes an adopted child;

"contract" means a contract of life insurance;

"creditor's group insurance" means insurance effected by a creditor in respect of the lives of the creditor's debtors whereby the lives of the debtors are insured severally under a single contract in respect of their debts to the creditor;

"debtor insured" means a person whose life is insured under a contract of creditor's group insurance;

"declaration" means an instrument signed by the insured or by a person who under this Part has acquired the rights and interests given to the insured, or in the case of group insurance to the group life insured, by the contract and by this Part,

(a) with respect to which an endorsement is made on the policy,

(b) that identifies the contract, or

(c) that describes the insurance or insurance money or a part thereof,

in which the insured or such person designates, or alters or revokes the designation of, insured's or such person's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

"family insurance" means insurance whereby the lives of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

"grandchild" includes the child of an adopted child;

"group insurance" means insurance, other than creditor's group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

"group life insured" means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, him or her;

"insurance" means life insurance;

"insured" means

(a) except as provided in subclause (b), the person who makes a contract with an insurer, and

(b) in the case of group insurance, the group life insured in the provisions relating to the designation of beneficiaries or other persons to receive insurance money or relating to the rights and status of beneficiaries;

"person" includes a firm, partnership, corporation, and an unincorporated society or association;

"will" includes a codicil.

APPLICATION OF PART

Application[40]

10.2(1) Despite any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Province on or after the 1st day of July, 1962, and, subject to subsections (2) and (3), applies to a contract made in the Province before that day.

Beneficiary for value[41]

10.2(2) The rights and interests of a beneficiary for value under a contract that was in force immediately before the 1st day of July, 1962 are those provided in *[?Part?]* of the Insurance Act, being *[?chapter?]* of the *[?Statutes?]*, 19*[??]*, as it existed immediately before that day.

Preferred beneficiary[42]

10.2(3) Where the person who would have been entitled to the payment of insurance money, if the money had become payable immediately before the 1st day of July, 1962, was a preferred beneficiary within the meaning of *[?Part?]* of the Insurance Act, being *[?chapter?]* of the *[?Statutes]* of *[??]*, 19*[??]*, as it existed immediately prior to that day, the insured may not, except in accordance with that Part,

(a) alter or revoke the designation of a beneficiary; or

(b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part.

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[40] Note to legislative council see NB section 133, NF section 3, NS section 174, PEI section 120

[41] The part and statutes specific to each province will have to be included by legislative drafters

[42] The part and statutes specific to each province will have to be included by legislative drafters

Group insurance

10.3 In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this Part applies in determining,

(a) the rights and status of beneficiaries if the group life insured was resident in the Province at the time the group life insured became insured; and

(b) the rights and obligations of the group life insured if the group life insured was resident in the Province at the time the group life insured became insured.

POLICY ISSUANCE AND CONTENTS

Insurer to issue policy

10.4(1) An insurer entering into a contract shall issue a policy and attached to that policy a copy of the application.

Documents forming contract

10.4(2) Subject to subsection (3), the provisions in

(a) the application,

(b) the policy,

(c) any document attached to the policy when issued, and

(d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

Contract of fraternal society

10.4(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

Copy of contract

10.4(4) Except in the case of a contract of group insurance or of creditor's group insurance, an insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the contract.

Idem

10.4(5) In the case of a contract of group insurance, or of creditor's group insurance, an insurer shall, upon request:

(a) furnish a copy of the application to the insured;

(b) where a group person insured or a debtor insured has been required to provide an insurer with a written statement as evidence of his or her insurability, furnish a copy of such statement to the group person insured or to the debtor insured or to a claimant under the contract;

(c) provide a copy of the relevant benefit provisions of the policy of group insurance to any group life insured by the policy.

Exceptions

10.5(1) This section does not apply to,

(a) a contract of group insurance;

(b) a contract of creditor's group insurance; or

(c) a contract made by a fraternal society.

Contents of policy

10.5(2) An insurer shall set forth the following particulars in the policy:

(a) the name or a sufficient description of the insured and of the person whose life is insured;

(b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;

(c) the amount, or the method of determining the amount, of the premium and the period of grace, if any, within which it may be paid;

(d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;

(e) the conditions upon which the contract may be reinstated if it lapses;

(f) the options, if any,

  (i)of surrendering the contract for cash;

  (ii)of obtaining a loan or an advance payment of the insurance money; and

  (iii)of obtaining paid-up or extended insurance; and;

(g) other particulars required by the regulations.

Right of rescission

10.5(3) A life insurance policy, other than one that contains an investment component, shall contain a rescission period of not less than 10 days commencing on the date that the policy is delivered to the policyholder, and any other provisions that may be prescribed.

Contents of group policy

10.6 In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth the following particulars in the policy:

(a) the name or a sufficient description of the insured;

(b) the method of determining the persons whose lives are insured;

(c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;

(d) the period of grace, if any, within which the premium may be paid;

(e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer, and;

(f) any provision removing or restricting the rights of group lives insured to make designations under this Part.

Contents of group certificate

10.7 In the case of a contract of group insurance, other than a contract of blanket insurance for a period of less than thirty days, or in the case of a contract of creditor's group insurance, an insurer shall issue, for delivery by the insured to each group life insured or to each debtor insured, a certificate or other document in which are set forth the following particulars:

(a) the name of the insurer and an identification of the contract;

(b) the amount, or the method of determining the amount, of insurance on the group life insured or on the debtor insured and on any person whose life is insured as a person dependent upon, or related to the group life insured;

(c) the circumstances in which the insurance terminates and the rights, if any, upon such termination, of the group life insured or of the debtor insured or of any person whose life is insured as a person dependent upon, or related to, the group life insured;

(d) the fact, if such be the case, that the contract of group insurance contains a provision removing or restricting the right of the group life insured to make designations under this Part and the method of determining the person or persons to whom the insurance money is or may be payable, and

(e) other particulars as prescribed by regulations.

CONDITIONS GOVERNING FORMATION OF CONTRACT

Insurable interest

10.8(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

Exceptions

10.8(2) A contract is not void for lack of insurable interest,

(a) if it is a contract of group insurance; or

(b) if the person whose life is insured has consented in writing to the insurance being placed on his or her life.

Consent of minor

10.8(3) Where the person whose life is insured is under the age of sixteen years, consent to insurance being placed on the person's life may be given by one of his or her parents or by a person standing in the role of parent to him or her.

Insurable interest, defined

10.9 Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in the person's own life and in the life of,

(a) the person's child or grandchild;

(b) the person's spouse;

(c) any person upon whom the person is wholly or in part dependent, for, or from whom the person is receiving, support or education;

(d) the person's officer or employee; and

(e) any person in the duration of whose life the person has a pecuniary interest.

Contract taking effect

10.10(1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless,

(a) the policy is delivered to an insured, the insured's assign or agent, or to a beneficiary;

(b) payment of the first premium is made to the insurer or its authorized agent; and

(c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

Delivery to agent

10.10(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in clause (1) (a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured.

Default in paying premium

10.11(1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid.

Payment by registered letter

10.11(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter.

Who may pay premium

10.12(1) Except in the case of group insurance or *of* creditor's group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

Period of grace

10.12(2) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of,

(a) thirty days from and excluding the day on which the premium is due; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

Contract in force during grace period

10.12(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium may be deducted from the insurance money.

Duty to disclose

10.13(1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the person's knowledge that is material to the insurance and is not so disclosed by the other. This provision shall apply to both applications for the issuance of a life insurance policy and to applications for an added coverage under an existing policy or an increase in the amount of coverage under an existing policy.

Failure to disclose

10.13(2) Subject to section 10.14, a failure to disclose, or a misrepresentation of, such a fact renders the contract voidable by the insurer.

Exceptions

10.14(1) This section does not apply to a misstatement of age or to disability insurance.

Incontestability

10.14(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 10.13 does not, in the absence of fraud, render the contract voidable.

Incontestability in group insurance

10.14(3) In the case of a contract of group insurance or creditor's group insurance, a failure to disclose or a misrepresentation of such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable.

10.14(4) In the event that insurance coverage has either been added to a contract or has been increased since the original issue of the contract, such additional insurance coverage or the amount of such increase shall, in the absence of fraud, be voidable by the insurer during the lifetime of the person whose life is insured under such coverage for a period of two years for the date of such additional coverage.

Non-disclosure by insurer

10.15 Where an insurer fails to disclose or misrepresents a fact material to the insurance contract, the contract is voidable by the insured.

Exceptions

10.16(1) This section does not apply to a contract of group insurance or of creditor's group insurance.

Misstatement of age

10.16(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

Limitation of insurable age

10.16(3) Where a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within sixty days after it discovers the error.

Misstatement of age in group insurance

10.17 In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable, and the provisions, if any, of the contract with respect to age or misstatement of age apply.

Effect of suicide

10.18(1) Where a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

Suicide and reinstatement

10.18(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

Exceptions

10.19(1) This section does not apply to a contract of group insurance or of creditor's group insurance or to a contract made by a fraternal society.

Lapse and reinstatement

10.19(2) Where a contract has lapsed at the end of the period of grace because a premium due at the beginning of that period was not paid, it may be reinstated by payment to the insurer of the overdue premium within a period of thirty days immediately following the end of such period of grace, provided that the person whose life was insured is alive at the times such payment is made.

Idem

10.19(3) Where a contract has lapsed and has not been reinstated under subsection (2), the insurer shall reinstate it if, within two years of the date of lapse, the insured

(a) applies for such reinstatement;

(b) pays to the insurer all overdue premiums and other indebtedness together with interest at the rate specified in the contract; and

(c) produces evidence satisfactory to the insurer that the health and the other elements of the insurability of the person whose life was insured have not materially changed since the insurance first took effect under the contract, provided that an insurer is not obliged to reinstate a contract under this subsection (3) if there has previously been in respect of the contract a failure to disclose, or a misrepresentation of, a fact required to be disclosed under section 10.13.

Exceptions

10.19(4) Subsections (2) and (3) do not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

Application of other sections

10.19(5) Sections 10.13 and 10.14 apply with necessary modifications to reinstatement of a contract.

BENEFICIARIES

Designation of beneficiary

10.20(1) Subject to subsection (4), an insured may in a contract or by a declaration designate himself, herself or itself, the insured's personal representative or a beneficiary to receive insurance money.

Change in designation

10.20(2) Subject to section 10.21, the insured may from time to time alter or revoke the designation by a declaration.

Meaning of "heirs", etc.

10.20(3) A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured.

Group insurance beneficiary restrictions

10.20(4) A provision in a contract of group insurance removing or restricting the rights of group lives insured to make designations under this Part is valid.

Designation continued

10.20(5) A contract of group insurance replacing another contract of group insurance on all or some of the lives insured under the other contract may validly provide that any designation of a personal representative or a beneficiary to receive insurance money applicable to the other contract shall be deemed to apply to the replacing contract.

Beneficiary rights and interests

10.20(6) When a beneficiary has become absolutely entitled to insurance money, with respect to that money the beneficiary has all the rights and interests of an insured.

Designation of beneficiary irrevocably

10.21(1) An insured may, in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary, and despite any other Act the insurance money is not subject to the control of the insured or of the insured's creditors and does not form part of the insured's estate.

Statement of agent and insured

10.21(2) No insurer shall issue a policy containing an irrevocable designation of a beneficiary or accept for filing a declaration containing an irrevocable designation of beneficiary unless there are attached to the policy or the declaration statements signed by

(a) the insured in the following form

> *I understand that the effect of my designating a beneficiary irrevocably is that, under the provisions of the Insurance Act while the beneficiary is living , I may not alter or revoke the designation without the consent of the beneficiary and I may not assign, exercise rights under or in respect of, surrender or otherwise deal with the contract without the consent of the beneficiary;*

and

(b) the insurer or an agent of the insurer in the following form:

> *I certify that I have fully explained to the insured the nature and effect of making an irrevocable designation of beneficiary and such explanation was given to the insured not in the presence of the beneficiary and that the insured indicated that the insured was aware of the irrevocable nature of the designation so made by the insured.*

Attempted designation

10.21(3) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsections (1) and (2), the designation has the same effect as if the insured had not purported to make it irrevocable.

Designation in invalid will

10.22(1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

Priorities

10.22(2) Despite the *Wills Act* [43], a designation in a will is of no effect against a designation made later than the making of the will.

Revocation

10.22(3) Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

Idem

10.22(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument if valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked.

Trustee for beneficiary

10.23(1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

Payment to trustee

10.23(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

Beneficiary predeceasing life insured

10.24(1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract

or by a declaration, the share is payable,

(a) to the surviving beneficiary; or

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[43] Drafters will need to review wording and make reference to the relevant act in that jurisdiction.

(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or

(c) if there is no surviving beneficiary, to the insured or the insured's personal representative.

Several beneficiaries

10.24(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares.

Disclaimer

10.24(3) A beneficiary may disclaim his, her or its right to insurance money by notice in writing filed with the insurer (such disclaimer being thereafter irrevocable) and after any disclaimer the insurance money shall be payable as if the disclaiming beneficiary had predeceased the person whose life is insured.

Right to sue

10.25. A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 10.23 may enforce as trustee, the payment of insurance money made payable to him, her or it in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

Insurance money free from creditors[44]

10.26(1) Notwithstanding any other Act, where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Contract exempt from seizure

10.26(2) Notwithstanding any other Act, while a designation of a beneficiary in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure.

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[44] Note to Legislative drafters - the intention of the addition of "Notwithstanding any other Act" is meant to strengthen the creditor proofing protections of these provisions the superintendent question whether this a practical way of accomplishing this

DEALINGS WITH CONTRACT DURING LIFETIME OF INSURED

Insured dealing with contract

10.27 Notwithstanding[51] the designation of a beneficiary, the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part as may be agreed upon with the insurer but may do so only subject to the interest of a beneficiary designated irrevocably unless the beneficiary has attained the age of 18 years and consents

Insured entitled to dividends

10.28(1) Despite the designation of a beneficiary irrevocably, subject to the terms of the contract or any agreement in writing with the insurer to the contrary, the insured is entitled during the lifetime of the person whose life is insured to the dividends or bonuses declared on a contract and to premiums paid in advance thereon but unused.

Insurer may use dividends

10.28(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

Right to prepaid premiums

10.28(3) Except in the case of group insurance or of creditor's group insurance, and subject to the terms of the contract or any agreement in writing with the insurer to the contrary, upon the happening of the event upon which the insurance money becomes payable to the beneficiary, dividends or bonuses and premiums paid in advance but unused and moneys deposited with the insurer for payment of future premiums held to the credit of the insured, shall become insurance money and shall also be payable to the beneficiary.

Transfer of ownership

10.29(1) Despite the *Wills Act*[45] where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

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[45] Or act appropriate in the jurisdiction

(a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his or her estate; and

(b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part.

Successive owners

10.29(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with necessary modifications, to each of such persons and to his or her rights and interests in the contract.

Saving

10.29(3) Despite any nomination made pursuant to this section, the insured may, prior to his or her death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.

Interest of assignee

10.30(1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against,

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably as provided in section 10.21 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

Effect on beneficiary's rights

10.30(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

Assignee deemed to be insured

10.30(3) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this

Part and, unless the document by which the contract is assigned otherwise specifies, any designation of a beneficiary not made irrevocably or any nomination made under section 10.30 is revoked.

Prohibition against assignment

10.30(4) The rights and interests of an insured, or in the case of group insurance, of a group life insured, are assignable, but a provision in a contract to the effect that such rights and interests are not assignable is valid.

Idem

10.30(5) This section applies with necessary modifications to the assignment of the rights and interests of a group life insured.

Group life insured, enforcing rights

10.31 A group life insured may in his or her own name enforce a right given to him or her under a contract, subject to any defense available to the insurer against him or her or against the insured.

Creditor's rights

10.32(1) Where a creditor elects not to enforce his, her or its rights under a contract of creditor's group insurance, or fails to make a claim to enforce such rights within three months from the happening of the event upon which the insurance money becomes payable, the personal representative of a debtor insured may enforce the creditor's rights in respect of a claim arising from the death of the debtor insured subject to any defence available to the insurer against the creditor or the debtor insured, and payment by the insurer to such personal representative as a result of the enforcement of such rights discharges the insurer to the extent of the amount paid.

Trust imposed

10.32(2) The personal representative shall hold any insurance money paid by the insurer in trust to the extent necessary to satisfy the debt, if any, then outstanding of the estate of the debtor insured to the creditor.

[46]

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[46] Consideration is being given to the CLHIA proposal and clause dealing with Powers of Attorney

MINORS

Capacity of minors

10.33(1) Except in respect of his or her rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

(a) to make an enforceable contract; and

(b) in respect of a contract.

10.33(2) [47] A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of nineteen years to receive insurance money payable to him or her and to give a discharge therefor.

PROCEEDINGS UNDER CONTRACT

Proof of claim

10.34. Where an insurer receives sufficient evidence of,

(a) the happening of the event upon which insurance money becomes payable;

(b) the age of the person whose life is insured;

(c) the right of the claimant to receive payment; and

(d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto.

Place of payment

10.35(1) Subject to subsection (4), insurance money is payable in the Province..

Dollars

10.35(2) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars.

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[47] In PEI the age of majority is eighteen and this subsection will not be required

Payment outside the Province

10.35(3) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on that person's behalf by the law of the domicile of the payee.

Exception for group insurance

10.35(4) In the case of a contract of group insurance, insurance money is payable in the Province or territory of Canada in which the group life insured was resident at the time he or she became insured.

Action in the Province

10.36. Despite where a contract was made, an action on it may be brought in a court by a resident of the Province if the insurer was authorized to transact insurance in the Province at the time the contract was made or at the time the action is brought.

Limitation of action

10.37(1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than one year after the furnishing of the evidence required by section 10.35 or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

Exception

10.37(2) Where a declaration has been made under section 10.41, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than one year after the date of the declaration.

Documents affecting title

10.38(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Saving

10.38(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Declaration as to sufficiency of proof

10.39 Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 10.35 and there is no other question in issue except a question under section 10.41, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence.

Declaration as to presumption of death

10.40 Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his or her not having been heard of for seven years and there is no other question in issue except a question under section 10.40, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to presumption of the death and the court may make the declaration.

Court may make order

10.41(1) Upon making a declaration under section 10.40 or 10.41, the court may make such order respecting the payment of the insurance money and respecting costs as it deems just and, subject to section 10.44, a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

Payment under order

10.41(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Stay of proceedings

10.42 Unless the court otherwise orders, an application made under section 10.40 or 10.41 operates as a stay of any pending action with respect to the insurance money.

Appeal

10.43 An appeal lies to the Court from any declaration, direction or order made under section 10.40, section 10.41 or subsection 10.42(1).

Power of court

10.44 Where the court finds that the evidence furnished under section 10.35 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in a action brought or to be brought, or may make such other order as it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

Payment into court

10.45(1) Where an insurer admits liability for insurance money and it appears to the insurer that,

(a) there are adverse claimants;

(b) the whereabouts of a person entitled is unknown; or

(c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court without notice for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

Discharge

10.45(2) A payment made in accordance with an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Simultaneous deaths

10.46 Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable as if the beneficiary had predeceased the person whose life is insured.

Insurance money payable in installments

10.47(1) Subject to subsections (2) and (3), where insurance money is payable in installments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary has not the right to commute the installments or to alienate or assign the beneficiary's interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the installments or pay them to any person other than the beneficiary, and the installments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessaries supplied to the beneficiary or the beneficiary's children who are minors.

Commutation by beneficiary

10.47(2) A court may, upon the application of a beneficiary and upon at least ten days notice, declare that in view of special circumstances,

(a) the insurer may, with the consent of the beneficiary, commute installments of insurance money; or

(b) the beneficiary may alienate or assign the beneficiary's interest in the insurance money.

Commutation after death of beneficiary

10.47(3) After the death of the beneficiary, his or her personal representative may, with the consent of the insurer, commute any installments of insurance money payable to the beneficiary.

Definition

10.47(4) In this section, "installments" includes insurance money held by the insurer under section 10.49.

Insurer holding insurance money

10.48(1) An insurer may hold insurance money,

(a) subject to the order of an insured or a beneficiary; or

(b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

Exception

10.48(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

Court may order payment

10.49 Where an insurer does not within thirty days after receipt of the evidence required by section 10.35 pay the insurance money to some person competent to receive it or into court, the court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid.

Costs

10.50 The court may fix without assessment the costs incurred in connection with an application or order made under section 10.46or 10.50, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just.

Minors

10.51(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money and any applicable interest into court to the credit of the minor.

Discharge of insurer

10.51(2) A payment made pursuant to subsection (1) discharges the insurer to the extent of the payment.

Procedure

10.51(3) No order is necessary for payment into court under subsection (1), but the clerk of the Court or other proper officer shall receive the money upon the insurer filing with him or her an affidavit showing the amount payable and the name, date of birth and residence of the minor, and, upon such payment being made, the insurer shall forthwith notify the [appropriate authority][48]and deliver to him or her a copy of the affidavit.

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[48] NF Director of Child Welfare, NB Minister of Finance, PEI and NS Public Trustee

Beneficiary under disability

10.52 Where it appears to an insurer that a representative of a beneficiary who is a minor or is otherwise under a disability may under the law of the domicile of such beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Payment of insurance money

10.53(1) [49] Where an insurer admits liability for insurance money payable to the estate of a person, the insurer may, no earlier than 60 days after the date of death of the person whose estate is entitled to the insurance money, pay an amount not exceeding a prescribed amount to any person or persons who have provided a statutory declaration satisfactory to the insurer, attesting that they are entitled to receive the insurance money:

(a) as personal representative of the estate of the deceased person; or

(b) as an heir of the intestate estate of a deceased person.

10.53(2) Any payment made under subsection (1) discharges any obligation of the insurer in respect of the money so paid, but does not affect the right of any other person claiming to be entitled to recover the money from the person or persons to whom it was paid.

Discharge

10.53(3) This section does not apply to insurance money payable

(a) under a contract of creditor's group insurance, or

(b) to an irrevocable beneficiary or to a beneficiary who is incapable of giving a valid discharge therefor by reason of minority or other lack of capacity.

Presumption against agency

10.54 No officer, agent or employee of an insurer and no person soliciting insurance, whether or not the person is an agent of the insurer, shall, to the prejudice of the insured, person whose life is insured, debtor insured or group life insured, be deemed to be the agent of the insured, person whose life is insured, debtor insured or group life insured in respect of any question arising out of a contract.

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[49] A regulation will have to set out a prescribed amount for the purposes of subsection (1), CLHIA's initial recommendation is $150,000 per contract to a personal representative under clause (a) and $15,000 per contract to an heir under clause (b).

Insurer giving information

10.55 An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

Sub-Part B: VARIABLE AND PARTICIPATING CONTRACTS[50]

VARIABLE CONTRACTS

Authorization for variable insurance contracts based on segregated funds

10.56(1) Any insurer incorporated and licensed under the laws of the Province to transact the business of life insurance may,

(a) issue policies for which the reserves vary in amount with the market value of a specified group of assets; and

(b) retain for investment,

  (I) policy dividends,

  (ii) policy proceeds that become payable on surrender or maturity of the policy not less than five years from the date of its issue if the policyholder so directs, and

  (iii) policy proceeds that become payable on the death of the policyholder if the policyholder or beneficiary so directs, on the basis that the liability of the insurer in respect thereof varies in amount with the market value of a specified group of assets,

and the insurer shall maintain in respect of such policies, dividends and proceeds, as the case may be, one or more separate and distinct funds with separate assets for each such fund.

How fund created

10.56(2) For the purpose of creating a separate and distinct fund under subsection (1), an insurer may, if duly authorized by by-law,

(a) make a transfer from the shareholders' fund but the amounts so transferred shall not exceed the surplus in the shareholders' fund; and

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[50] Revise Sub-Part to ensure that it reflects practice

(b) make a transfer of assets from one or more life insurance funds, but,

(I) the maximum amount that may be transferred from any life insurance fund is the amount by which 25 per cent of the surplus in that fund exceeds the aggregate of all prior transfers from that fund to all such separate and distinct funds under this subsection and clause (3) (b) less the aggregate of all prior transfers to that fund pursuant to clause (5) (a), and

(ii)the maximum amount that may be transferred from all life insurance funds is the amount by which 10 per cent of the surplus in those funds or $2,000,000, whichever is the lesser, exceeds the aggregate of all prior transfers from those funds to all such separate and distinct funds pursuant to this subsection and clause (3) (b) less the aggregate of all prior transfers to all life insurance funds pursuant to clause (5) (a).

Transfers to fund

10.56(3) For the purpose of maintaining a separate and distinct fund under subsection (1), an insurer may from time to time make transfers from a life insurance fund,

(a) to the extent that the assets of the separate and distinct fund are not sufficient to provide for any benefits guaranteed under the terms of the policies for which the separate fund is held; or

(b) in any case other than that mentioned in clause (a), if the insurer provides evidence satisfactory to the Superintendent that such transfers are necessary for the proper administration of the policies or deposits for which the separate fund is held.

Surplus

10.56(4) Where for the purposes of subsection (2) the surplus in any fund is required to be determined, the surplus shall be taken as shown in the most recent annual statement filed with the Superintendent.

Segregation of assets for policies

10.56(5) Where a separate and distinct fund is maintained under subsection (1), the assets of such fund shall, subject to subsection (3), be available only to meet the liabilities arising under the policies or deposits in respect of which such fund is maintained, except that,

(a) any amount representing the value of a transfer, or any part thereof, to such separate and distinct fund under subsection (2) or clause (3) (b), may, with the approval of the Superintendent, be transferred back to the fund or funds from which such transfer was made, and, where there is more than one such fund, the amount transferred back to each shall be that proportion of the whole amount that the amount transferred from that fund to the separate and distinct fund was to the total amount so transferred from all the funds; and

(b) any assets, other than assets in respect of a transfer to the separate and distinct fund under subsection (2) or clause (3) (b), remaining in the separate and distinct fund after the discharge of all the insurer's liabilities in respect of the policies or deposits for which the fund is maintained, may be transferred to such other fund as the directors may determine.

Value of transfers

10.56(6) For the purposes of clause (2) (b), the value of any assets transferred to or from a separate and distinct fund shall be taken as the value thereof at the time of transfer to that fund and, for all other purposes, the value from time to time of any assets that have been transferred to a separate and distinct fund maintained under subsection (1) shall be the market value of such assets.

Definition of variable insurance contracts

10.57(1) In this section, "variable insurance contract" means an annuity or life insurance contract for which the reserves or a part thereof vary in amount with the market value of a specified group of assets held in a separate and distinct fund and includes a provision in a life insurance contract under which policy dividends or policy proceeds may be retained for investment in such a fund.

Prohibition

10.57(2) No insurer shall issue a variable insurance contract or offer to enter into a variable insurance contract that under this Act would be deemed to be made in the Province until the insurer has complied with all requirements set out in the regulations.

Form of contract

10.57(3) The forms of variable insurance contracts and information folders with respect thereto shall comply with the requirements of this Act and the Regulations.

Form of information folder

10.57(4) The information folder shall provide brief and plain disclosure of all material facts relating to the variable insurance contract and shall contain a certificate to that effect signed by the chief executive officer and the chief financial officer of the insurer or such other persons as the Regulations may prescribe.

Delivery of information folder[51]

10.57(5) No application for a variable insurance contract shall be accepted by an insurer until the insurer has delivered to the applicant therefor a copy of the latest information folder relating thereto that is on file with the Superintendent.

New information folders

10.57(6) So long as an insurer continues to issue a variable insurance contract in respect of which it has filed an information folder, it shall,

(a) forthwith after the occurrence of any material change in the contract or in any other facts set out in the latest information folder so filed; and

(b) within thirteen months after the date of filing of the latest information folder so filed, or such other period of time as may be provided by the Regulations,

file with the Superintendent a new information folder in respect thereof.

Prohibition order

10.57(7) Where it appears to the Superintendent that,

(a) an information folder or any other document filed with the Superintendent by an insurer with respect to a variable insurance contract,

  (I) fails to comply in any substantial respect with the requirements of this Act or the Regulations,

  (ii) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive, or

  (iii) conceals or omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or

(b) the financial condition of the insurer or its method of operation in connection with the issuance of its variable insurance contracts will not afford sufficient protection to prospective purchasers of such variable insurance contracts in the Province,

the Superintendent after affording the insurer an opportunity to be heard, may order and prohibit the insurer from continuing to issue such variable insurance contracts in the Province.

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[51] **The intent is that superintendents will only receive information folders from provincial companies. Information folders from extra-provincial companies will be assumed to have been approved**

PARTICIPATING CONTRACTS

Separate accounts

10.58 Every insurer licensed to transact life insurance shall keep separate and distinct accounts of participating and non-participating business

Distribution of parts of profits to participating policyholders

10.59(1) The directors of an insurer incorporated and licensed under the laws of the Province to transact the business of life insurance as a joint stock insurance company may from time to time set apart such portion of the net profits as the directors consider safe and proper for distribution as dividends or bonuses to shareholders and holders of participating policies, ascertaining the part thereof that has been derived from participating policies and distinguishing that part from the profits derived from other sources.

Idem

10.59(2) Despite anything to the contrary in any letters patent of incorporation or contract, the holders of participating policies are entitled to share in that portion of the profits that has been distinguished as having been derived from participating policies (including a share of the profits arising from the sale of securities in the proportion of the mean participating fund to the mean total funds) to the extent of at least 90 per cent thereof in any year.

Interest on unimpaired paid up capital stock

10.59(3) In fixing or arriving at the amount of divisible profits, there may be included interest on the amount of the unimpaired paid up capital stock and on any other sum or sums from time to time standing to the credit of the shareholders after deducting any amounts expended in the establishment, prosecution or extension of the company's business or applied to making good any impairment of capital, and such interest may be allowed or credited to the shareholders at the average net rate of interest earned in the preceding year or other period under consideration upon the mean total funds of the company, but the shareholders are to be charged with a fair proportion of all losses incurred upon investments or other losses of a similar character in the proportion of the mean shareholders' funds to the mean total funds.

Rights of participating policyholders

10.59(4) This section does not interfere with the rights of the participating policyholders of an insurer referred to in subsection (1) to share in the profits realized from the non-participating branch of its business in any case to which the policyholders are so entitled.

Sub-Part C: MISCELLANEOUS PROVISIONS

REGULATIONS

Regulations

10.60 The Minister may make Regulations

(a) prescribing the form and content of variable insurance contracts;

(b) prescribing the form, content, time of filing and delivery of information folders and the persons to whom information folders shall be delivered;

(c) for the furnishing of information by an insurer or an agent thereof to prospective purchasers of variable insurance contracts;

(d) prescribing the documents, reports, statements, agreements and other information required to be filed, furnished or delivered under this section, and the form and content thereof;

(e) prescribing additional particulars to be included in a policy or group certificate;

(f) prescribing limits for the purposes of subsection 10.53(1);

(g) prescribing right of rescission provisions for the purposes of subsection 10.5(3);

(h) generally for the better administration of this Part, and

(i) generally for the public interest.

Part 11 - ACCIDENT and SICKNESS INSURANCE

INTERPRETATION AND APPLICATION

Definitions

11.1 In this Part,

"application" means an application for insurance or for the reinstatement of insurance;

"beneficiary" means a person, other than the insured or the insured's personal representative, to whom or for whose benefit insurance money is made payable in the event of death by accident;

"blanket insurance" means that class of group insurance that covers loss:

(i) arising from specified hazards incidental to or defined by reference to a particular activity or activities; and

(ii) which occurs during a limited or specified period not exceeding 365 days in duration;

"contract" means a contract of insurance;

"creditor's group insurance" means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of the creditor's debtors are insured severally under a single contract in respect to their debts to the creditor;

“debtor insured” means a person whose ***life or well-being, or whose life and well-being***, is insured under a contract of creditor’s group insurance;

"declaration" means an instrument signed by the insured or by a person who under this Part has acquired the rights and interests given to the insured, or in the case of group insurance to the group person insured, by the contract and by this Part,

(a) with respect to which an endorsement is made on the policy, or

(b) that identifies the contract, or

(c) that describes the insurance or insurance fund or a part thereof,

in which the insured or such person designates or alters or revokes the designation of the insured's or such person's personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money that is payable in the event of death by accident;

"family insurance" means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

"group insurance" means insurance other than creditor's group insurance and family insurance, whereby the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

"group person insured" means a person whose life or well-being, or whose life and well-being, is insured under a contract of group insurance, but does not include a person who is insured thereunder as a person dependent upon or related to him or her;

"instrument" includes a will;

"insurance" means accident insurance, sickness insurance, or accident insurance and sickness insurance; ("assurance")

"insured",

(a) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and

(b) in all other cases means the person who makes a contract with an insurer;

"person insured" means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

"will" includes a codicil.

Application of Part

11.2(1) Despite any agreement, condition or stipulation to the contrary, this Part applies to contracts made in the Province on or after the 1st day of [date, 197x][52] ... .

Idem

11.2 (2) In the case of contracts made before and in effect on that day,

(a) this section and sections *11.1, 11.3, 11.4, 11.17, 11.18, 11.19 and 11.23, and sections 11.25 to 11.43* of this Part apply; and

(b)[53] sections [*230, 231, 232, 233, 235, 242 and 245*] of the *Insurance Act*, being [chapter xxx, 196x], as it existed immediately before the [?1st day of October, 1970?], continue to apply.

Exceptions

11.2(3) This Part does not apply to,

(a) accidental death insurance;

(b) disability insurance; or

(c) insurance provided under sections *9.33 and 9.46 to 9.67*

Group insurance

11.3 In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this Part applies in determining,

(a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in the Province at the time the insured became insured; and

(b) the rights and obligations of the group person insured if the person was resident in the Province at the time the insured became insured.

Issue of policy

11.4 An insurer entering into a contract shall issue a policy.

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[52] In NB – October 1970; in NL – July 1971; in NS – December 1970; in PE – October 1970

[53] Drafters will have to confirm appropriate section and legislation references

Exceptions

11.5(1) This section does not apply to,

(a) a contract of group insurance;

(b) a contract of creditor's group insurance; or

(c) a contract made by a fraternal society.

Contents of policy

11.5(2) An insurer shall set forth the following particulars in the policy:

(a) the name or a sufficient description of the insured and of the person insured;

(b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;

(c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;

(d) the conditions upon which the contract may be reinstated if it lapses; and

(e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates.

Confinement clauses void

11.6(1) Where a contract of accident insurance or sickness insurance issued after the [54][*2nd day of November, 1973*] includes a provision that a benefit is payable to an insured on account of his or her disability and the provision is conditional on the confinement of the insured, the condition does not bind the insured.

Idem

11.6(2) Notwithstanding subsection (1), a contract of accident or sickness insurance may provide for

(a) early commencement of loss of income benefits based on the admission to hospital of the person insured;

(b) payment of loss of income benefits during the period of in-patient hospitalization of the person insured;

(c) payment of per diem benefits during the period of in-patient hospitalization of the person insured;

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[54] **Drafters will require appropriate date in each province.**

(d) payment of lump sum benefits based on the admission to hospital or the period of in-patient hospitalization of the person insured.

Contents of group policy

11.7 In the case of a contract of group insurance, or of creditor's group insurance, an insurer shall set forth the following particulars in the policy:

(a) the name or a sufficient description of the insured;

(b) the method of determining the group persons insured, persons insured and debtors insured;

(c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;

(d) the period of grace, if any, within which the premium may be paid.;

(e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates; and

(f) any provision removing or restricting the rights of group persons insured to make designations under this Part.

CONTINUATION OF COVERAGE WHERE CONTRACT TERMINATED

11.8(1) In this section

"original maximum benefit period" means, in respect of a contract of group insurance, the maximum period provided under the contract for the payment of any benefit payable under the contract in respect of loss of income;

"prescribed time period" means, in respect of a contract of group insurance, a continuous period of six months following the termination of the contract or a benefit provision in the contract or such longer continuous period as may be provided in the contract.

11.8(2) When a contract of group insurance or a benefit provision in a contract of group insurance is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to

(a) loss of income because of disability,

(b) death, or

(c) dismemberment,

(d) accidental damage to natural teeth

arising from an accident or sickness that occurred before the termination of the contract or benefit provision, if the disability, death or dismemberment is reported to the insurer within the prescribed time period.

11.8(3) Notwithstanding subsection (2), an insurer does not remain liable under a contract or benefit provision described in that subsection to pay a benefit for loss of income for the recurrence after the termination of that contract or benefit provision of a disability that recurs after a continuous period of six months, or such longer period as may be provided in the contract, during which the group person insured was not disabled.

11.8(4) An insurer which is liable under subsection (2) to pay a benefit for loss of income as a result of the disability of a group person insured is not liable to pay benefits for any period longer than the remaining portion of the original maximum benefit period in respect of the disability of the group person insured.

11.8(5) If a contract of group insurance, in this subsection called the "replacement contract", is entered into within thirty-one days after the termination of another contract of group insurance, in this subsection called the "other contract", and insures the same group or part of the group insured under the other contract,

*(a)*the replacement contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacement contract from and after the termination of the other contract if

(i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and

(ii) the person is a member of a class eligible for insurance under the replacement contract,

*(b)*every person who was insured under the other contract and who is insured under the replacement contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacement contract, and

*(c)*no person who was insured under the other contract shall be excluded from eligibility under the replacement contract solely because of not being actively at work on the effective date of the replacement contract,

but if the replacement contract provides that the full benefits required to be paid under subsection (2) by the insurer of the other contract are to be paid instead under the replacement contract, the insurer of the other contract is not liable to pay those benefits.

Contents of group certificate

11.9(1) Except as provided in subsection (2), in the case of a contract of group insurance, or of creditor's group insurance, an insurer shall issue for delivery by the insured to each group person insured, or to each debtor insured, a certificate or other document in which are set forth the following particulars:

(a) the name of the insurer and a sufficient identification of the contract;

(b) the amount, or the method of determining the amount, of insurance on the group person insured, on any person insured or on a debtor insured;

(c) the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured or of a debtor insured;

(d) a brief description of the principal benefits, conditions of eligibility, exclusions and limitations together with a notice indicating this is a summary and does not form part of the master policy, and an indication of where full and complete benefit information may be obtained; and

(e) the fact, if such be the case, that the contract of group insurance contains a provision removing or restricting the right of the group person insured to make designations under this Part and the method of determining the person or persons to whom the insurance money is payable.

Exception

11.9(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of 365 days or less.

Exceptions or reduction

11.10(1) Except as otherwise provided in this section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as "Exceptions" or "Reductions".

Idem

11.10(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

Idem

11.10(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

Idem

11.10(4) The exception or reduction mentioned in section 11.23 need not be set forth in the policy.

Idem

11.10(5) This section does not apply to a contract made by a fraternal society.

POLICY ISSUANCE AND CONTENTS

Insurer to issue policy

11.11(1) An insurer entering into a contract shall issue a policy.

Contract

11.11(2) The provisions in,

(a) the application; and

(b) the policy; and

(c) any document attached to the policy when issued; and

(d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

Amend or waive

11.11(3) No agent has authority to change the contract or waive any of its provisions.

Idem

11.11(4) An insurer shall be deemed not to have waived any condition of a contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

Copy of application

11.11(5) Except in the case of a contract of group insurance, or of creditor's group insurance, an insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Idem

11.11(6) In the case of a contract of group insurance, or of creditor's group insurance, an insurer shall, upon request:

(a) furnish a copy of the application to the insured, or

(b) where a group person insured or a debtor insured has been required to provide an insurer with a written statement as evidence of insurability,

furnish a copy of such statement to the group person insured or to the debtor insured or to a claimant under the contract.

Changes in Occupation

11.12(1) This section does not apply to a contract of group insurance or of creditor's group insurance.

Premium adjustment

11.12(2) If, in a contract, an insurer reserves the right to adjust the rate of premium if the person insured changes his *or her* gainful occupation, the following provisions shall apply:

(a) if the new occupation is at the time of change classified by the insurer as more hazardous than he previous occupation of the person insured, the insurer's liability under the contract is limited to the amount that the premium paid would have provided for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(b) if the new occupation is at the time of change classified by the insurer as less hazardous than the previous occupation of the person insured, and the insurer is notified in writing of the change, the insurer shall, with effect from the date of receipt of the advice of the change in occupation, reduce the premium rate according to the limits, classification of risks and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the original premium exceeds the premium at the lower rate to the extent that the higher premium has been paid for a period after the date of receipt of the advice of the change in occupation.

Notice and Proof of Claim

11.13(1) An insured, a person insured, a debtor insured, a group person insured or a beneficiary entitled to make a claim under a contract on account of an accident, sickness or disability shall furnish to the insurer proof of the happening of the event giving rise to the claim, the cause or nature of the accident, sickness or disability and the duration of such disability, the right of the claimant to receive payment, *[the age of the insured, a person insured, a debtor insured, a group person insured[* and the age of the beneficiary if relevant:

(i) in the event of death or dismemberment by accident, within 90 days from the date of loss;

(ii) for loss of income benefits, within 90 days from the date disability commenced or the last day of any qualifying period of continuous disability which must be satisfied before benefits commence;

(iii) for any other benefits to which the Part applies, within 90 days from the date on which the charge was incurred or the service performed or the date of any other event giving rise to a claim.

Saving

11.13(2) Failure to furnish proof of claim within the time prescribed in subsection (1) does not invalidate a claim if the proof is furnished as soon as is reasonably possible, and in no event later than one year from the end of the period prescribed in subsection (1) if it is shown that it was not reasonably possible to furnish proof within the time so prescribed.

Right of examination

11.13(3) As a condition precedent to recovery of insurance moneys under a contract, the claimant shall afford to the insurer an opportunity to examine the person of the person insurer, debtor insured or group insured when and so often as it reasonably requires.

When moneys payable for other than loss of income benefits

11.14(1) All moneys payable, other than for loss of income benefits, shall be paid within 30 days after the insurer has received satisfactory proof of claim.

When loss of income benefits payable

11.14(2) The first moneys payable for loss of income benefits shall be paid within 30 days after the insurer receives satisfactory proof of claim and thereafter any payments due shall be made not less frequently than once in every 30 days provided satisfactory proof of continuing loss is given to the insurer upon request.

Limitation of actions for other than !oss of income benefits

11.15(1) An action or proceeding against an insurer for the recovery of insurance money, other than for loss of income benefits, shall not be commenced more than one year after the date the insurance money became payable of would have become payable if proof had been furnished as required by section 11.14.

Limitation of actions for loss of income benefits

11.15(2) An action or proceeding against an insurer for the recovery of insurance money for loss of income benefits shall not be commenced more than one year after the later of:

(i) the date the first payment would have become due if proof had been furnished as required by section [104], and

(ii) if benefits were actually paid, the date the last benefit was actually paid.

Termination for non-payment of initial or renewal premium

11.16(1) Where a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of,

(a) 30 days, from and excluding the day on which the premium is due; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium

whichever is the long period.

11.16(2) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium may be deducted from the insurance money.

11.16(3) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid.

11.16(4) This section does not apply to a contract of group insurance or of creditor's group insurance.

11.16(5) This section does not apply to a contract made by a fraternal society.

CONDITIONS GOVERNING FORMATION OF CONTRACT

Insurable interest

11.17 Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in the person's own life and well-being and in the life and well-being of,

(a) the person's child or grandchild;
(b) the person's spouse;
(c) any person upon whom the person is wholly or in part dependent for, or from whom the person is receiving, support or education;
(d) an officer or employee of the person; and
(e) any person in whom the person has a pecuniary interest.

Lack of insurable interest

11.18(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

Exceptions

11.18(2) A contract is not void for lack of insurable interest,

(a) if it is a contract of group insurance; or
(b) if the person insured has consented in writing to the insurance.

Consent of minors

11.18(3) Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of the person's parents or by a person standing in the role of parent to the person.

POLICIES ON LIVES OF MINORS

Capacity of minors

11.19(1) Except in respect of his or her rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

(a) to make an enforceable contract; and

(b) in respect of a contract.

Beneficiary eighteen years of age

11.19(2) A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of nineteen years to receive insurance money payable to him or her and to give a discharge therefor.

MISREPRESENTATION AND NON-DISCLOSURE

Duty to disclose

11.20(1) An applicant for insurance on the person's own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the person's knowledge that is material to the insurance and is not so disclosed by the other.

Failure to disclose

11.20(2) Subject to sections 11.19 and 11.22, a failure to disclose or a misrepresentation of such a fact renders a contract voidable by the insurer.

Group insurance failure to disclose

11.20(3) In the case of a contract of group insurance, or of creditor's group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured, a person insured or a debtor insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 11.19, voidable by the insurer.

Incontestability

11.21(1) Subject to section 11.22 and except as provided in subsection (2),

(a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 11.18 to be disclosed does not, except in the case of fraud, render the contract voidable;

(b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 11.18 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

Exception

11.21(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

Application of incontestability to reinstatement

11.22 Sections 11.18 and 11.19 apply with necessary modifications to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 11.19 commences to run in respect of a reinstatement from the date of reinstatement.

Pre-existing conditions

11.23 Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

(a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and

(b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defense against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

Misstatement of age

11.24(1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either,

(a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or

(b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

Misstatement of age in group insurance

11.24(2) In the case of a contract of group insurance or of creditor's group insurance, if there is a misstatement to the insurer of the age of a group person insured, person insured or debtor insured, the provisions, if any, of the contract with respect to age or misstatement of age shall apply.

True age governs

11.24(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs.

BENEFICIARIES

Designation of beneficiary

11.25(1) Subject to section 11.24, an insured may in a contract or by a declaration designate the insured's personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

Designation in invalid will

11.25(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

Priorities

11.25(3) A designation in a will is of no effect against a designation made later than the making of the will.

Revocation

11.25(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

Idem

11.25(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will, would have been revoked by operation of law or otherwise, the designation is thereby revoked.

Restrictions on designations by group persons insured

11.26 A provision in a contract of group insurance removing or restricting the rights of group persons insured to make designations under this Part is valid.

Meaning of "heirs", etc.

11.27(1) A designation in favor of the "heirs", "next of kin" or "estate", or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.

Death of beneficiary

11.27(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable,

(a) to the surviving beneficiary; or

(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or

(c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his or her personal representative.

Right to sue

11.27(3) A beneficiary designated under section 11.23 may upon the death by accident of the person insured or group person insured enforce for the beneficiary's own benefit, and a trustee appointed under section 11.26 may enforce as trustee, the payment of insurance money payable to him, her or it, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defense that it could have set up against the insured or the insured' s personal representative.

Trustee for beneficiary

11.28 An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.

Documents affecting title

11.29(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of any court of competent jurisdiction affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Saving

11.29(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Interest of assignee

11.29(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada the assignee has priority of interest as against,

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary.

Assignee deemed to be insured

11.29(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part , and, unless the document by which the contract is assigned otherwise specifies, any designation of a beneficiary is revoked

Prohibition against assignment

11.29(5)

The rights and interests of an insured, or in the case of group insurance, of a group person insured, are assignable, but a provision in a contract that such rights and interests are not assignable is valid

Idem

11.29(6) This section applies with necessary modifications to the assignment of the rights and interests of a group person insured

Insurance money free from creditors

11.30(1) Notwithstanding any other Act, where a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Contract exempt from seizure

11.30(2) Notwithstanding any other Act , while there is in effect a designation of beneficiary in favor of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

Group person insured enforcing rights

11.31 A group person insured may, in his or her own name, enforce a right given by a contract to him or her, or to a person insured thereunder as a person dependent upon or related to him or her, subject to any defense available to the insurer against him or her or such person insured or against the insured.

Creditor enforcing rights

11.32(1) Where a creditor elects not to enforce his or her rights under a contract of creditor's group insurance, or fails to make a claim to enforce such rights within three months from the happening of the event upon which the insurance money becomes payable, the debtor insured or his or her personal representative may enforce the creditor's rights in respect of a claim arising from an accident or sickness of the debtor insured subject to any defense available to the insurer against the creditor or the debtor insured, and payment by the insurer to such debtor insured or his or her personal representative as a result of the enforcement of such rights discharges the insurer to the extent of the amount paid.

Monies in trust

11.32(2) The debtor insured or the debtor insured's personal representative shall hold any insurance money paid by the insurer in trust to the extent necessary to satisfy the debt, if any, then outstanding of the debtor insured or of the debtor insured's estate to the creditor.

Simultaneous deaths

11.33 Unless a contract or a declaration otherwise provides, where a person insured, group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 11.25(2) as if the beneficiary had predeceased the person insured or group person insured.

Payment into court

11.34(1) Where the insurer admits liability for the insurance money or any part thereof and it appears to the insurer that,

(a) there are adverse claimants;

(b) the whereabouts of the person entitled is unknown; or

(c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply without notice to the court for an order for payment of money into court, and the court may upon such notice, if any, as it deems necessary, make an order accordingly.

Costs of proceedings

11.34(2) The court may fix without assessment the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just.

Discharge of insurer

11.34(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

Where beneficiary a minor

11.35(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money and any applicable interest into court to the credit of the minor.

Discharge of insurer

11.35(2) A payment made pursuant to subsection (1) discharges the insurer to the extent of the payment.

Procedure

11.35(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him or her an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the [appropriate authority] [55]and deliver to him or her a copy of the affidavit.

Beneficiary under disability

11.36 Where it appears to an insurer that a representative of a beneficiary who is a minor or is otherwise under a disability may under the law of the domicile of such beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Payments not exceeding $10,000

11.37 Even though insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding $10,000 to,

(a) a relative by blood or connection by marriage of a person insured or the group person insured; or

(b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto, and any such payment discharges the insurer to the extent of the amount paid.

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[55] Need to cite appropriate authorities in each province

Place of payment

11.38(1) Subject to subsection (2), insurance money is payable in the Province.

Exception for group insurance

11.38(2) In the case of a contract of group insurance, money is payable in the province or territory of Canada in which the group person insured was resident at the time the insured became insured.

Dollars

11.38(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

Payment outside the Province

11.38(4) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on that person's behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

Payment to personal representative

11.38(5) Where insurance money is by the contract payable to a person who has died or to his or her personal representative and such deceased person was not at the date of his or her death domiciled in [the Province, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his or her domicile, and any such payment discharges the insurer to the extent of the amount paid.

Action in the Province

11.39 Regardless of the place where a contract was made, a claimant who is a resident of the Province may bring an action in the Province if the insurer was authorized to transact insurance in the Province at the time the contract was made or at the time the action is brought.

Insurer giving information

11.40 An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

Undue prominence

11.41 The insurer shall not in the policy give undue prominence to any provision or statutory conditions as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

Relief from forfeiture

11.42 Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the proof of loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and any court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.

Presumption against agency

11.43 No officer, agent or employee of an insurer, and no person soliciting insurance, whether or not the person is an agent of the insurer shall, to the prejudice of the insured, person insured, group person insured or debtor insured, be deemed to be the agent of the insured, the person insured, group person insured or debtor insured in respect of any question arising out of the contract.

REGULATIONS

Regulations

11.44 The Minister may make Regulations

(a) generally for the better administration of this Part;

(b) generally for the public interest.

PART 12 - TRANSITIONAL PROVISIONS

Note: It is intended that this Part will provide for the continuance of existing companies under this Act.

Grandfathering existing Provincial companies respecting Capitalization requirements (s. 2.11) and governance issues.
Deeming existing Provincial companies to simply "become subject to the new Act (s. 3B)
Delete application of (NS) Corporations Registration Act to insurers